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COMPENDIUM

OF

PRECEDENTS IN CONVEYANCING.

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COMPENDIUM

OF

PRECEDENTS IN CONVEYANCING.

COMPRISING

The Forms Required in Ordinary Practice.

BY

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AND

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IN TWO VOLUMES.

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668

MORTGAGES (*a*).

RECITALS (*b*).

Agreement for loan by one.

I. AND WHAS the sd, *mortgagee*, has at the request of the sd, *mortgagor*, agreed to lend him the sum of £——, upon having the repayment thereof, with interest at the rate hereinafter mentioned, secured in manner hereinafter appearing.

The same by several on joint account.

II. AND WHAS the sd, *mortgagees*, have at the request of the sd, *mortgagor*, agreed to lend him the sum of £—— out of moneys belonging to them upon a joint account upon having the repayment thereof, with interest at the rate hereinafter mentioned, secured in manner hereinafter appearing.

Agreement for loan by several on separate accounts.

III. AND WHAS the sd A., B., and C., *mortgagees*, have at the request of the sd, *mortgagor*, agreed to lend him the sum of £—— in the proportions following, that is to say, the sd A. £——, the sd B. £——, and the sd C. £——, upon having the repayment of the sd several sums of £——, £——, and £——, with interest thereon at the rate hereinafter mentioned, secured in manner hereinafter appearing.

Agreement to secure sum due on account stated.

IV. AND WHAS upon an account stated this day between the sd, *mortgagor*, and, *mortgagee*, there is owing to the sd, *mortgagee*, from the sd, *mortgagor*, the sum of £——, and

(*a*) As to mortgages, see Davidson, Prec., vol. ii., part 2; Elphinstone, Introd. Conv., p. 138 *et seq.*

(*b*) See also the forms of recitals under the head CONVEYANCES, pp. 231, *t seq.*, most of which are applicable also to mortgages and other assurances.

it has been agreed that the repayment thereof, with interest at the rate hereinafter mentioned, shall be secured in manner hereinafter appearing.

Agreement for payment of compound interest.

v. And whas it has also been agreed that the sd loan shall be continued and the interest to accrue upon the sd sum of £——, shall [at the option of the sd, *mortgagor*,] accumulate at compound interest in manner and subject as hereinafter appears.

Agreement that surety shall join.

vi. And whas the sd, *surety*, has agreed to join in these presents as surety for the sd, *mortgagor*, in manner hereinafter appearing.

Policy of assurance on life of mortgagor. Variation where effected in name of mortgagee.

vii. And whas the sd, *mortgagor, or mortgagee*, as part of the intended security has effected a policy of assurance on his own life, *or*, "in his own name on the life of the sd, *mortgagor*," in the —— Assurance Society for the sum of £——, dated the —— day of ——, numbered ——, and under the annual premium of £——.

Title of mortgagor to several policies on his life.

viii. And whas the sd, *mortgagor*, is entitled to the several policies of assurance on his life hereinafter mentioned, namely a policy effected in the —— Society for the sum of £——, dated, &c., numbered ——, and under the annual premium of £——, &c., [*or*, the several policies of assurance on his life specified in the schedule hereto].

Mortgage of freeholds. Variations for freeholds, leaseholds, and copyholds.

ix. And whas by an indre dated, &c., and expressed to be made between, &c., in consideration of the sum of £—— to the sd A., *mortgagor*, paid by the sd B., *mortgagee*, [B., C., and D., *mortgagees*, out of monies belonging to them on a joint account], the sd A. covenanted with the sd B., his [B., C., and D., their] exors, admors, and assigns, for payment to the sd B., his exors, admors, or assigns, [B., C., and D., or the survivors or survivor of them, or the exors or admors of such survivor, their or his assigns,] of the sum of £——, with interest for the same after the rate of £—— per cent. per annum, on the —— day of —— then next, And also, in case the sd sum of £——, or any part thereof, should remain unpaid after the sd—— day of ——, for payment to the sd B., his exors, admors, or assigns, [B., C., and D., or the survivors,

&c.,] of interest for the sd sum of £——, or for so much thereof as should for the time being remain unpaid, at the rate aforesd by equal half-yearly payments on the —— day of —— and the —— day of ——; And by the same indre the sd A. granted unto the sd B., his [B., C., and D., their] heirs and assigns, All those, *freehold parcels, or*, "the freehold hereditaments hereinafter mentioned and expressed to be hereby assured," with their appurtenances, To hold the same unto and to the use of the sd B., his [B., C., and D., their] heirs and assigns, *if freeholds only*, "subject to a proviso for redemption of the same premises on payment by the sd A., his heirs, exors, admors, or assigns, to the sd B., his exors, admors, or assigns, [B., C., and D., or the survivors, &c.,] of the sum of £——, with interest for the same in the meantime at the rate aforesd, on the sd —— day of —— then next," *if freeholds, and leaseholds*, "subject to the proviso for redemption thereinafter contained; And by the same indre the sd A. demised unto the sd B., his [B., C., and D., their] exors, admors, and assigns, the premises comprised in the hereinbefore recited indre of lease, with their appurtenances, To hold the same unto the sd B., his [B., C., and D., their] exors, admors, and assigns, for the residue of the sd term of —— years granted by the sd lease, except the last day thereof, and subject to the proviso for redemption thereinafter contained; And in the sd indre now in recital was contained a proviso for redemption of the sd freehold and leasehold premises, on payment by the sd A., his heirs, exors, admors, or assigns, to the sd B., his exors, admors, or assigns, [B., C., and D., or the survivors, &c.,] of the sd sum of £——, with interest thereon at the rate aforesd, on the —— day of —— then next"; [*for copyholds add*, And by the same indre the sd A. covenanted with the sd B., his [B., C., and D., their] exors, admors, and assigns, that he the sd A. and his heirs, and all other necessary parties (if any), would forthwith, at his and their own cost, surrender All that, *copyhold parcels, or*, "the copyhold hereditaments hereinafter mentioned and

covenanted to be surrendered," with their appurtenances, to the use of the sd B., his [B., C., and D., their] heirs and assigns, according to the custom of the manor of ——, in the county of ——, subject to the rents, fines, suits, and services due and accustomed for the same, and to a condition for making void the same surrender corresponding with the proviso for redemption thereinbefore contained as aforesd ;] And in the indre now in recital were contained a power of sale and other powers and provisions for further securing the re-payment of the sd sum of £—— and interest.

Conditional surrender of copyholds.

X. And whas [in pursuance of the covenant in that behalf contained in the hereinbefore recited indre of the —— day of——, *or*, "the within-written indre,"] the sd, *mortgagor*, on the —— day of ——, surrendered out of court into the hands of the lord of the sd manor the sd, *or*, "within-described," copyhold hereditaments and premises to the use of the sd, *mortgagee*, his, [*mortgagees*, their] heirs and assigns, subject to a condition for making void the sd surrender upon payment by the sd, *mortgagor*, his heirs, exors, admors, or assigns, to the sd, *mortgagee*, his exors, admors, or assigns, [*mortgagees*, or the survivors or survivor of them, or the exors or admors of such survivor, their or his assigns,] of the sum of £——, with interest for the same at the rate of £—— per cent. per annum, on the —— day of —— then next.

State of mortgage debt.

XI. And whas the sd sum of £—— remains owing to the sd, *mortgagee*, on the security of the hereinbefore recited, *or*, "within-written," indre, but all interest for the same has been paid up to the date of these presents, as the sd, *mortgagee*, doth hereby acknowledge.

State of mortgage debt where interest in arrear.

XII. And whas the sd sum of £——, together with the sum of £—— for interest thereon from the —— day of ——, making the total sum of £——, remains owing to the sd, *mortgagee*, on the security of the hereinbefore recited [within-written] indre.

Agreement

XIII. And whas the sd, *mortgagee*, has agreed with the

sd, *mortgagor*, to lend him the further sum of £——, upon having the repayment thereof, with interest at the rate hereinafter mentioned, secured in manner hereinafter appearing. for further advance.

XIV. And whas the sd, *transferee*, has agreed to pay to the sd, *mortgagee*, the sd sum of £——, *the amount due for principal, and interest if any in arrear*, upon having such transfer as is hereinafter contained of the sd mortgage debt of £—— and interest, and the securities for the same. Agreement for transfer, the mortgagor not being a party.

XV. And whas the sd, *transferee*, has at the request of the sd, *mortgagor*, agreed to pay to the sd, *mortgagee*, the sum of £——, *the amount owing for principal, and interest, if any*, upon having such transfer as is hereinafter contained of the sd mortgage debt of £——and interest, and the securities for the same. Agreement where he is a party.

XVI. And upon having the repayment of the sd sum of £—— and interest further secured in manner hereinafter appearing. Agreement for further security.

XVII. And whas it has been further agreed that the sd parties hereto shall respectively execute and enter into such other covenants, agreements, and arrangements as are hereinafter contained. General agreement to enter into covenants.

CONSIDERATIONS.

I. In consideration of the sum of £—— upon the execution of these presents paid to the sd, *mortgagor*, by the sd, *mortgagee*, the receipt whereof is hereby acknowledged. Present advance.

II. In consideration of the sum of £—— upon the execution of these presents paid to the sd, *mortgagor*, by the sd, *mortgagees*, out of moneys belonging to them on a joint account, the receipt whereof is hereby acknowledged. Present advance by trustees or others lending money on a joint account.

Sum paid by mortgagee to third party at request of mortgagor.

III. In consideration of the sum of £—— upon the execution of these presents paid to the sd, *third party*, at the request of the sd, *mortgagor*, by the sd, *mortgagee*, the receipt and payment whereof, in manner aforesd, is hereby acknowledged.

Antecedent debt.

IV. In consideration of the sum of £—— so owing by the sd, *mortgagor*, to the sd, *mortgagee*, as aforesd.

COVENANTS FOR PAYMENT (*a*).

To pay principal.

I. The sd, *mortgagor*, doth hereby for himself, his heirs, exors, and admors, covenant with the sd, *mortgagee*, his, [*mortgagees*, their] exors, admors, and assigns, (*b*) that he the sd, *mortgagor*, his heirs, exors, or admors, will on the —— day of —— next, *usually six months from date*, pay to the sd, *mortgagee*, his exors, admors, or assigns, [*mortgagees*, or the survivors or survivor of them, or the exors or admors of such survivor, their or his assigns,] the sum of £——, *the principal sum*, with interest for the same in the meantime at the rate of £—— per cent. per annum from the date of these presents.

To pay interest after default.

II. And will thereafter, in case and so long as the sd sum of £——, or any part thereof, shall remain unpaid, pay to him or them [them or him] interest for the sd sum of £——, or for so much thereof as shall for the time being remain unpaid, at the rate of £—— per cent. per annum, by equal half-yearly payments on the —— day of —— and the —— day of ——.

(*a*) The following forms are adapted to the case of one mortgagee, with variations throughout for a mortgage to several on a joint account.

(*b*) It is proper to covenant with the "assigns" of the mortgagee, as choses in action are now assignable; see above, p. 265, note.

III. The sd, *covenantors*, do hereby for themselves, their heirs, exors, and admors, and as a separate covenant each of them doth hereby, for himself, his heirs, exors, and admors, covenant with the sd, *mortgagee*, his, [*mortgagees*, their] exors, admors, and assigns, that they the sd, *covenantors*, or one of them, their or one of their heirs, exors, or admors, will, &c., *continue as in forms* I. *and* II. The same by two (*c*) jointly and severally.

IV. The sd, *mortgagor*, doth hereby for himself, his heirs, exors, and admors, covenant with the sd, *mortgagee*, his [*mortgagees*, their] exors, admors, and assigns, that the sd, *mortgagor*, his heirs, exors, or admors, will, on the —— day of ——, *six months from date*, pay to the sd, *mortgagee*, his exors, admors, or assigns, [*mortgagees*, or the survivors, &c., *as in form* I.,] the sum of £——, *original advance*, with interest for the same in the meantime at the rate of, &c., from the date of these presents, And will on such —— day of —— or —— day of ——, *the days for payment of interest*, as shall happen next after the same respectively shall be advanced or paid or become owing, pay to the sd, *mortgagee*, his exors, admors, or assigns, [*mortgagees*, or the survivors, &c.,] every other sum which may hereafter be advanced or paid by him or them, [them, him, or any of them,] to, or become owing to him or them, [them, him, or any of them,] by the sd, *mortgagor*, his heirs, exors, admors, or assigns, with interest thereon at the rate aforesd from the time of the same respectively being advanced or paid or becoming owing. To pay present and future advances.

V. And further that if the sd sum of £——, *original* Interest on

(*c*) The following is a shorter form :—" The sd, *covenantors*, do hereby for themselves respectively and their respective heirs, exors, and admors, jointly and severally covenant, &c., that they the sd, *covenantors*, or their respective heirs, exors, or admors, or some or one of them, will," &c. When there are more than two covenantors, say, " Some or one of them, their or some or one of their heirs, exors, or admors will," &c. See also the forms of covenants at p. 431.

present and future advances.

advance, or any other sum which may hereafter be advanced or paid or become owing as aforesd, or any part thereof, shall remain unpaid after the day on which the same is hereinbefore covenanted to be paid, he the sd, *mortgagor*, his heirs, exors, or admors will, so long as the same sum or any part thereof shall remain unpaid, pay to the sd, *mortgagee*, his exors, admors, or assigns, [*mortgagees*, or the survivors, &c.,] interest for such sum, or for so much thereof as shall for the time being remain unpaid, at the rate aforesd, by equal half-yearly payments on the —— day of —— and the —— day of ——.

To re-transfer stock, and in the meantime to pay sums equal to dividends. Variation where interest is to be paid on proceeds of sale of stock.

VI. THE SD, *mortgagor*, doth hereby for himself, his heirs, exors, and admors, covenant with the sd, *mortgagee*, his, [*mortgagees*, their,] exors, admors, and assigns, that he the sd, *mortgagor*, his heirs, exors, or admors, will transfer into the name or names [names or name] of the sd, *mortgagee*, his exors, admors, or assigns, [*mortgagees*, or the survivors, &c., *as in form* 1.,] the sum of £—— £3 per cent. —— Bank Annuities, on the —— day of —— next, *six months from date*, [and will in the meantime pay to the sd, *mortgagee*, his exors, admors, or assigns, [*mortgagees*, or the survivors, &c.,] such sums of money as he or they [they or he] would have been entitled to receive as the dividends of the sd sum of £—— Bank Annuities if the same had not been sold, at such times and in such manner as such dividends would have been payable], [*or*, and will also pay to him or them [them or him] interest for the sd sum of £——, the equivalent as aforesd of the sd sum of £—— Bank Annuities, to be computed from the date of these presents at the rate of £—— per cent. per annum, on the sd —— day of —— next].

To pay sums equal to dividends of stock after default. Variation where interest is to

VII. AND FURTHER that if the sd sum of £—— Bank Annuities, or any part thereof, shall not be transferred into the name or names [names or name] of the sd, *mortgagee*, his exors, admors, or assigns, [*mortgagees*, or the survivors, &c., *as in form* 1.,] on or before the sd —— day of —— next, he the sd, *mortgagor*, his heirs, exors, or admors will, so long as the

same sum or any part thereof shall remain unreplaced, pay to the sd, *mortgagee*, his exors, admors, or assigns, [*mortgagees*, or the survivors, &c.,] such sums of money as he or they [they or he] would have been entitled to receive as the dividends of the sd sum of £—— Bank Annuities, if the same had not been sold, or of so much thereof as shall not for the time being have been replaced, at such times and in such manner as such dividends would have been payable, *or*, "interest at the rate of £—— per cent. per annum for the sd sum of £——, *the sum produced by the sale of the stock*, or for so much thereof as shall not for the time being have been satisfied by a transfer of a proportionate part of the said sum of £—— Bank Annuities, by equal half-yearly payments on the —— day of —— and the —— day of ——." be paid on proceeds of sale of stock.

VIII. The sd, *mortgagor*, doth hereby for himself, his heirs, exors, and admors, covenant with the sd, *mortgagee*, his [*mortgagees*, their] exors, admors, and assigns, that he the sd, *mortgagor*, his heirs, exors, or admors, will pay to the sd, *mortgagee*, his exors, admors, or assigns, [*mortgagees*, or the survivors, &c., *as in form* I.,] the sum of £——, *the principal*, with interest for the same in the meantime at the rate of £—— per cent. per annum, by the instalments, at the times, and in the manner following, that is to say, the principal sum of £—— by —— equal [half] yearly instalments of £—— each, whereof the first is to be paid on the —— day of —— next, and a like instalment on every subsequent —— day of —— [and —— day of ——] until the sd principal sum of £—— shall be fully paid, and the interest on the sd sum of £——, or on so much thereof as shall from time to time remain unpaid, by [half-]yearly payments one very —— day of ——, [and —— day of ——] along with the instalments of the principal, so that upon each such day the interest up To pay principal by instalments, and interest on unpaid principal (*d*).

(*d*) This form may sometimes be suitable. But the ordinary covenant for payment, qualified by the proviso at p. 715, *infra*, is the proper form for use where the mortgagee is to have the right to call in the whole sum on default in payment of any instalment.

to that day shall be paid together with the instalment of principal then payable as aforesd.

To pay principal on demand, and interest in the meantime.

IX. THE SD, *mortgagor*, doth hereby for himself, his heirs, exors, and admors, covenant with the sd, *mortgagee*, his, [*mortgagees*, their] exors, admors, and assigns, that he the sd, *mortgagor*, his heirs, exors, or admors, will on demand pay to the sd, *mortgagee*, his exors, admors, or assigns, [*mortgagees*, or the survivors, &c., *as in form* I.,] the sum of £——, *the principal sum*, and until payment thereof will pay to him or them [them or him] interest on the sd sum of £——, or on so much thereof as shall for the time being remain unpaid, at the rate of £—— per cent. per annum, from the date of these presents, by equal half-yearly payments on the —— day of —— and the —— day of —— in every year, or on the day of the repayment of the principal sum (as the case may be).

HABENDUM.

Freeholds.

I. TO HAVE AND TO HOLD the sd hereditaments and premises hereinbefore expressed to be hereby granted (*a*) UNTO the sd, *mortgagee*, his, [*mortgagees*, their] heirs and assigns, TO THE USE of the sd, *mortgagee*, his, [*mortgagees*, their] heirs and assigns, for ever (*b*), subject to the proviso for redemption hereinafter contained.

(*a*) Or "appointed" or "appointed and granted," as the case may be.

(*b*) If the mortgage is subject to a prior charge or charges, add here, "Subject to the sd indre of mortgage of the —— day of —— and the sum of £——, and interest thereby secured as aforesaid, and" or "subject to the sd prior charges and incumbrances to which the sd premises are hereinbefore expressed to be subject and."

II. To HOLD the sd premises hereby assured UNTO AND TO THE USE of the sd, *mortgagee*, his, [*mortgagees*, their] heirs and assigns (*c*), subject to the proviso for redemption hereinafter contained. The same. Short form.

III. To HAVE AND TO HOLD the sd hereditaments and premises hereinbefore expressed to be hereby assigned [demised] UNTO the sd, *mortgagee*, his, [*mortgagees*, their] exors, admors, and assigns, henceforth for all the residue now unexpired of the sd term of —— years [respective terms of —— years and —— years] granted by the sd indre [several indres] of lease [except the last day thereof, *or*, "of each such term"] (*c*), subject to the proviso for redemption hereinafter contained. Leaseholds by assignment. Variation for demise.

IV. To HAVE AND TO HOLD all the sd premises hereinbefore expressed to be hereby assigned UNTO the sd, *mortgagee*, his *mortgagees*, their] exors, admors, and assigns (*c*), subject to the proviso for redemption hereinafter contained. Personalty.

PROVISOES FOR REDEMPTION.

I. PROVIDED ALWAYS, and it is hereby agreed and declared that if the sd, *mortgagor*, his heirs, exors, admors, or assigns, shall on the sd —— day of —— next, pay to the sd, *mortgagee*, his exors, admors, or assigns, [*mortgagees*, or the survivors or survivor of them or the exors or admors of such survivor, their or his assigns,] the sd sum of £——, *the principal*, with interest for the same in the meantime at the rate aforesd, then and in such case the sd, *mortgagee*, his, [*mortgagees*, their] heirs, exors, admors, or assigns, as the case may require (*d*), shall at any time thereafter, upon Freeholds.

(*c*) See note (*b*), preceding page.

(*d*) The words, "exors, admors, as the case may require," are introduced, having regard to the provisions of the Vendor and Purchaser Act, 1874, 37 & 38 Vic., c. 78, s. 4.

the request and at the cost of the sd, *mortgagor*, his heirs, exors, admors, or assigns, reconvey the sd premises hereby mortgaged to the use of the sd, *mortgagor*, his heirs or assigns, or as he or they shall direct (*e*).

Leaseholds or personalty.

II. PROVIDED ALWAYS, and it is hereby agreed and declared that if, &c., *as in preceding form*, then and in such case the sd, *mortgagee*, his, [*mortgagees*, their] exors, admors, or assigns, shall at any time thereafter upon the request and at the cost of the sd, *mortgagor*, his exors, admors, or assigns, re-assign, [*or in a mortgage of leaseholds by underlease*, surrender] the sd premises hereby mortgaged unto the sd, *mortgagor*, his exors, admors, and assigns, or as he or they shall direct (*e*).

Freeholds and leaseholds, or personalty.

III. PROVIDED ALWAYS, and it is hereby agreed and declared that if, &c., *as in form* I., then and in such case the sd, *mortgagee*, his, [*mortgagees*, their] heirs, exors, admors, or assigns, as the case may require, shall at any time thereafter, upon the request and at the cost of the sd, *mortgagor*, his heirs, exors, admors, or assigns, reconvey such of the sd premises hereby mortgaged as are of freehold tenure to the use of the sd, *mortgagor*, his heirs and assigns, and re-assign, [*or in the case of leaseholds mortgaged by underlease*, surrender] such of the sd premises hereby mortgaged as are of leasehold tenure, [*or*, as consist of personalty], to the sd, *mortgagor*, his exors, admors, and assigns, or as he or they shall direct (*e*).

Copyholds mortgaged alone.

IV. SUBJECT to a condition for making void the surrender to be made in pursuance of this covenant if the sd, *mortgagor*, his heirs, exors, admors, or assigns shall, on the sd —— day of —— next, pay to the sd, *mortgagee*, his exors, admors, or assigns, [*mortgagees*, or the survivors, &c., *as*

(*e*) If there be a prior charge or charges, add, "subject to the said prior mortgage of the —— day of —— if subsisting," *or* "subject to the said prior charges and incumbrances hereinbefore mentioned or referred to, or such of them as shall for the time being be subsisting."

in form I.,] the sd sum of £——, with interest for the same in the meantime at the rate of £—— per cent. per annum.

Copyholds mortgaged with freeholds, leaseholds, or personalty.

V. SUBJECT to a condition for making void the surrender to be made in pursuance of this covenant corresponding with the proviso for redemption hereinbefore contained.

In mortgage to secure present and future advances.

VI. PROVIDED ALWAYS, and it is hereby agreed and declared that if the sd, *mortgagor*, his heirs, exors, admors, or assigns shall, on the sd —— day of —— next, pay to the sd, *mortgagee*, his exors, admors, or assigns, [*mortgagees*, or the survivors, &c., *as in form* I.,] the sd sum of £——, *the principal*, with interest thereon in the meantime at the rate aforesd, and shall on such —— day of —— or —— day of —— as shall happen next after the same respectively shall be advanced or paid or become owing, pay to the sd, *mortgagee*, his exors, admors, or assigns, [*mortgagees*, or the survivors, &c.,] every other sum of money which may be advanced or paid by or become owing to him or them [them or him] as aforesd with interest thereon as aforesd, then and in such case the sd, *mortgagee*, &c., *as in form* I., II., *or* III.

In Stock mortgage.

VII. PROVIDED ALWAYS, and it is hereby agreed and declared that if the sd, *mortgagor*, his heirs, exors, admors, or assigns shall, on the sd —— day of —— next, transfer into the name or names of the sd, *mortgagee*, his exors, admors, or assigns, [names or name of the sd, *mortgagees*, or the survivors, *&c.*, *as in form* I.,] the sum of £——, £3 per cent. —— Annuities, and shall in the meantime pay to him or them [them or him] such sums of money as he or they [they or he] would have been entitled to receive as the dividends of the sd sum of £—— Bank Annuities if the same had not been sold, at such times and in such manner as such dividends would have been payable, [*or*, and shall also pay to him or them [them or him] interest for the sd sum of £——, the equivalent as aforesd of the sd sum of £—— Bank Annuities, to be computed from the date of these presents at the rate aforesd, on the sd —— day of

—— next], then and in such case, &c., *as in form* I., II., *or* III.

Where principal is to be repaid by instalments.

VIII. PROVIDED ALWAYS, and it is hereby agreed and declared that if the sd, *mortgagor*, his heirs, exors, admors, or assigns, shall pay to the sd, *mortgagee*, his exors, admors, or assigns, [*mortgagees*, or the survivors, &c., *as in form* I.,] the sd sum of £——, *the principal*, together with interest thereon, or on the unpaid part thereof for the time being, in the meantime by the instalments at the times at the rate and in manner hereinbefore mentioned, pursuant to the covenant in that behalf hereinbefore contained, then, &c., *as in form* I., II., *or* III.

Where principal is to be paid on demand.

IX. PROVIDED ALWAYS, and it is hereby agreed and declared that if the sd, *mortgagor*, his heirs, exors, admors, or assigns, shall on demand pay to the sd, *mortgagee*, his exors, admors, or assigns, [*mortgagees*, &c., *as in form* I.,] the sd principal sum of £——, and shall, until payment thereof, pay to him or them [them or him] interest on the sd sum of £——, or on so much thereof as shall for the time being remain unpaid at the rate aforesd on the days hereinbefore mentioned, pursuant to the covenant in that behalf hereinbefore contained, then, &c., *as in form* I., II., *or* III.

POWERS OF SALE (*a*).

I.

FREEHOLDS *or* COPYHOLDS. *Variations where the mortgage is* SUBJECT *to* PRIOR CHARGES.

The power to sell and convey.

AND IT IS HEREBY agreed and declared that it shall be lawful for the sd, *mortgagee*, his exors, admors, or assigns,

(*a*) A power of sale is given to mortgagees by Lord Cranworth's Act, 23 & 24 Vic., c. 145, ss. 11 to 16, but, in respect of the events in which it is exercisable, it is less advantageous than the common power; see Davidson,

[*mortgagees*, or the survivors or survivor of them, or the exors or admors of such survivor, their or his assigns] at any time or times after the sd —— day of —— next, *the day appointed for payment*, without any further consent of the sd, *mortgagor*, his heirs or assigns, to sell the sd hereditaments and premises hereby mortgaged or any of them or any part or parts thereof, either together or in parcels, and either by public auction or private contract, and subject to any special or other stipulations or conditions as to title or evidence or commencement of title or otherwise which may be deemed proper, with power to buy in at any sale by auction, and to rescind or vary any contract for sale, and to re-sell the premises which shall have been so bought in, or as to which the contract for sale shall have been rescinded without being responsible for any loss occasioned thereby (*b*) and for the purposes aforesd to execute and do all such assurances and things as he or they [they or he] shall think fit: And it is hereby also agreed and declared that upon any sale under the power hereinbefore contained by the exors or admors of the sd, *mortgagee*, [of the survivor of the sd, *mortgagees*,] or by any other person or persons who may not be seised of the legal estate in the premises sold, the heirs of the sd, *mortgagee*, [of such survivor] or the person or persons in whom such legal estate shall be vested, shall make such assurances of the same

On sale by personal representatives, heir to concur.

Prec., vol. ii., part 2, p. 637, 3rd ed. The Act applies to real and leasehold property, but not to personalty.

(*b*) If the mortgage is subject to prior charges, add here, "and to make any such sale as aforesd, either subject to the sd prior mortgage or charge of the —— day of ——, [*or*, subject to any prior charges or incumbrances affecting the premises sold or any part thereof,] and to the moneys thereby [respectively] secured, or any part thereof, or discharged therefrom; and in the latter case either upon the terms of such moneys, or any part thereof, being discharged out of the purchase-money or otherwise."

for the purpose of effectuating such sale as the person or persons by whom the sale shall be made shall direct: PROVIDED ALWAYS, and it is hereby agreed and declared, that the sd, *mortgagee*, his exors, admors, or assigns, [*mortgagees*, or the survivors, &c., *as above*] shall not exercise the power of sale hereinbefore contained, unless and until default shall have been made in payment of some moneys intended to be hereby secured, and he or they [they or he] shall have given a notice in writing to the sd, *mortgagor*, his heirs, exors, admors, or assigns, to pay off the moneys for the time being owing on this security, or left a notice in writing to that effect at or upon some part of the sd mortgaged premises, and default shall have been made in payment of such moneys or part thereof for six calendar months from the time of giving or leaving such notice, or unless and until the whole or part of some half-yearly payment of interest shall be in arrear for three calendar months, and any such notice as aforesd shall be sufficient although not addressed to any person by name or description, and although any person or persons affected thereby may be unborn, unascertained, or under disability: PROVIDED ALSO, and it is hereby declared that, upon any sale purporting to be made in pursuance of the aforesd power in that behalf, the purchaser or purchasers shall not be bound to see or enquire whether either of the cases mentioned in the proviso lastly hereinbefore contained has happened, or whether any default has been made in payment of any moneys intended to be hereby secured, or whether any money remains owing on this security, or as to the necessity or expediency of the conditions subject to which the sale is made, or otherwise as to the regularity of the sale, or be affected by express notice of any irregularity whatsoever therein, and notwithstanding any such irregularity such sale shall, as far as regards the safety and protection of the purchaser or purchasers, be deemed to be within the aforesd power in that behalf, and be valid and effectual accordingly, and the remedy of the sd, *mortgagor*, his heirs or assigns, in respect of any breach of the proviso

Events in which power is to be exercised.

Proviso for protection of purchasers.

lastly hereinbefore contained, or of any irregularity in such sale shall be in damages only: AND IT IS HEREBY (*c*) agreed and declared that upon any such sale as aforesd the receipt of the sd, *mortgagee*, his exors, admors, or assigns, [*mortgagees*, or the survivors, &c.,] for the purchase-money (*d*) shall effectually discharge the purchaser, or purchasers therefrom, and from being concerned to see to the application thereof or being answerable for the loss or misapplication thereof: AND IT IS HEREBY further agreed and declared that the sd, *mortgagee*, his exors, admors, or assigns, [*mortgagees*, or the survivors, &c.,] shall hold the moneys to arise from any such sale as aforesd (*d*) upon trust in the first place, by and out of the same to reimburse himself or themselves [themselves or himself], or to pay all the costs and expenses incurred in or about such sale or otherwise in respect of the premises: And in the next place, to apply such moneys in or towards satisfaction of the moneys for the time being owing on this security, and then to pay the surplus (if any) of the sd purchase-moneys unto the sd, *mortgagor*, his heirs or assigns: AND IT IS HEREBY further declared that the aforesd power of sale may be exercised by any person or persons who shall for the time being be entitled to receive and give a discharge for the moneys owing on this security.

Receipt clause for purchase-money.

Trusts of purchase-money.

Power may be exercised by any person entitled to mortgage-money.

II.

LEASEHOLDS *mortgaged by* ASSIGNMENT. VARIATIONS *for a mortgage by* UNDERLEASE (*e*).

AND IT IS HEREBY agreed and declared that it shall be law-

The power to sell and convey.

(*c*) The power to give receipts might be omitted, as the statutory power in 22 & 23 Vic., c. 35, s. 23, is sufficient.

(*d*) If the mortgage is subject to prior charges, add, "or such part thereof as shall be paid to him or them [them or him]."

(*e*) For the variations where the mortgage is subject to prior charges, see the notes to Form I.

ful, &c., *as in form* I., p. 704, *to the end of the first clause containing the power to sell and convey,* [*if the mortgage be by underlease add,* "AND IT IS HEREBY further agreed that after any sale or sales shall have been made under this power of sale, the sd, *mortgagor,* his exors, admors, or assigns, shall stand possessed of the sd last day of the sd term of —— years as regards the premises sold in trust for the purchaser or purchasers thereof, and to assign or dispose of the same as he or they shall direct:"(*f*)] PROVIDED ALWAYS, and it is hereby further declared that the sd, *mortgagee,* his exors, admors, or assigns, [*mortgagees,* or the survivors, &c.,] shall not exercise the power of sale hereinbefore contained unless and until he or they [they or he] shall have given a notice in writing to the sd, *mortgagor,* his exors, admors, or assigns, to pay off the moneys for the time being owing on this security, or left a notice in writing, &c., *remainder of this clause and subsequent clauses as in mortgage of freeholds, form* I., p. 706, *except that for the words,* "heirs or assigns," *of the mortgagor the words,* "exors, admors, or assigns," *will be substituted throughout.*

Nominal reversion to be held in trust for purchaser.

Events in which power is to be exercised.

III.

PERSONALTY. VARIATIONS *for* POLICY *of* ASSURANCE (*g*).

The power to sell and convey.

AND IT IS HEREBY agreed and declared that it shall be lawful for the sd, *mortgagee,* his exors, admors, or assigns, [*mortgagees,* or the survivors, &c., *as in Form* I.] at any time or times after the sd —— day of —— next, without any further consent of the sd, *mortgagor,*

(*f*) If the declaration of trust, p. 713, Form II., is inserted, the clause in this bracket will be omitted, see below, p. 756, note to Prec. XII.

(*g*) The statutory power of sale does not apply to personalty. See p. 704, note (*a*). For the variations where the mortgage is subject to prior charges, see the notes to Form I.

his exors, admors, or assigns, to sell the sd premises hereby mortgaged, or any of them, or any part or parts thereof, either together or in parcels [the sd policy of assurance hereby mortgaged, or any new policy or policies which may be effected pursuant to the provisions in that behalf hereinbefore contained, either together or separately], and either by public auction or private contract [and as to any such policy, either by way of surrender to the insurance office or otherwise], and subject to any special or other stipulations, &c., *remainder of the first clause giving power to sell and convey, form* I., p. 704: PROVIDED ALWAYS, and it is hereby further declared that the sd, *mortgagee*, his exors, admors, or assigns, [*mortgagees*, or the survivors, &c.,] shall not exercise the power of sale hereinbefore contained unless and until default shall have been made in payment of some moneys intended to be hereby secured, and he or they [they or he] shall have given a notice in writing to the sd, *mortgagor*, his exors, admors, or assigns, to pay off the moneys for the time being owing on this security, or left a notice in writing to that effect [or sent such notice by post in a registered letter addressed to him or them] at his or their or some or one of their usual or last known place or places of abode or business in England, and default shall have been made in payment of such moneys, or some part thereof, *&c., remainder of this clause and subsequent clauses as in mortgage of freeholds, except that for the mortgagor's*, "heirs or assigns," *his*, "exors, admors, or assigns," *will be substituted throughout.*

Events in which power is to be exercised.

IV.

FREEHOLDS, LEASEHOLDS, COPYHOLDS, *and* PERSONALTY. VARIATIONS *for* POLICY *of* ASSURANCE (*h*).

AND IT IS HEREBY agreed and declared that it shall be law- The power to sell and convey.

(*h*) For variations where there are prior charges, see the notes to Form I.

ful for the sd, *mortgagee*, his exors, admors, or assigns, [*mortgagees*, or the survivors, &c., *as in form* I.], at any time or times after the sd —— day of —— next, without any further consent of the sd, *mortgagor*, his heirs, exors, admors, or assigns, to sell the sd premises hereby mortgaged, or any of them, or any part or parts thereof respectively, [or any new policy or policies which may be effected pursuant to the provisions in that behalf hereinbefore contained], either together or in parcels or separately and either by public auction or private contract, [and as to any policy either by way of surrender to the insurance office or otherwise], and subject to any special or other stipulations, *&c., remainder of the first clause containing the power to sell and convey, form* I., p. 704: AND IT IS HEREBY also agreed and declared that upon any sale or sales of freehold or copyhold hereditaments which shall be made, &c., *heirs of mortgagee to concur as in form* I., p. 705, *if leaseholds are mortgaged by underlease, add*, "AND THAT after any sale of leasehold hereditaments under the sd power of sale," *nominal reversion to be held in trust for purchaser, as in form* II., p. 708 (*i*): PROVIDED ALWAYS, and it is hereby further declared, that the sd, *mortgagee*, his exors, admors, or assigns, [*mortgagees*, or the survivors, &c.,] shall not exercise the power of sale hereinbefore contained unless and until default shall have been made in payment of some moneys intended to be hereby secured, and he or they [they or he] shall have given a notice in writing to the sd, *mortgagor*, his heirs, exors, admors, or assigns, to pay off the moneys for the time being owing on this security, or left a notice in writing to that effect at his or their or some or one of their usual or last known place or places of abode or business in England, or at or upon some part of the sd mortgaged premises, and default, &c., *remainder of this clause and proviso for protection of purchasers, as in form* I., p. 706, *except that for the mortgagor's*, "heirs or assigns,"

Events in which power is to be exercised.

(*i*) See p. 708, note (*f*).

his, "heirs, exors, admors, or assigns," *will be substituted. Remaining clauses as in form* I., *except that the trust of the surplus purchase moneys will be for the mortgagor, his*, "exors, admors, or assigns, as personal estate."

V.

SHORT *Form for any kind of* PROPERTY (*k*).

AND IT IS HEREBY declared that it shall be lawful for the mortgagee [s], at any time or times after the sd —— day of —— next, without any further consent of the mortgagor to sell the sd mortgaged premises, or any part thereof, either together or in parcels or separately, and either by public auction or private contract, [and in the case of any policy of assurance, either by surrender to the office or otherwise], and subject to any stipulations as to title or otherwise, and with power to buy in at any sale by auction, and to rescind or vary any contract for sale, and to re-sell without being responsible for loss, and to enter into, execute, and do any agreements, assurances, or acts for the purposes aforesd, [*in case of freeholds or copyholds, add*, "and that upon any sale by any person or persons in whom the legal estate shall not be vested, the person or persons in whom the same shall be vested, shall execute such assurance thereof as shall be required," *in case of leaseholds mortgaged by demise, add*, "and after any sale of the sd leasehold premises, or any part thereof, the mortgagor shall hold the sd last day of the sd term of —— years in trust for the purchaser or purchasers thereof" (*l*)]: PROVIDED THAT the sd power of sale shall not be exercised unless default shall have been made in payment of some moneys hereby secured, and the mortgagee [s] shall have given a notice in

The power to sell.

Special clause as to freeholds, or copyholds.

And as to leaseholds.

Events in which power is to be exercised.

(*k*) This form is adapted to a case in which the interpretation clause, p. 730, is used.

(*l*) See p. 708, note (*f*).

writing to the mortgagor, to pay off the moneys owing on this security, or left such a notice at his usual or last known place of abode [or upon the sd mortgaged premises], and default shall be made in payment of such moneys, or part thereof, for six calendar months from the giving or leaving such notice, or unless some interest due under this security shall be in arrear for three calendar months: PROVIDED ALSO that no purchaser shall be concerned to enquire whether the last preceding clause has been complied with, or whether any money remains owing on this security, or otherwise as to the regularity of the sale, which, so far as regards the safety and protection of the purchaser shall be valid notwithstanding any want of compliance with the last preceding clause or other irregularity: AND IT IS HEREBY further declared that the mortgagee [s] shall out of the purchase-moneys upon any such sale pay all the costs incurred in or about the sale or otherwise in respect of the premises, and in the next place apply the same in or towards satisfaction of the moneys owing on this security and then pay the surplus (if any) to the mortgagor.

Proviso for protection of purchasers.

Application of purchase-money.

MISCELLANEOUS CLAUSES.

Declaration of trust of copyholds till surrender.

I. AND IT IS HEREBY agreed that until such surrender shall be made the sd, *mortgagor*, and his heirs shall stand seized of the sd premises hereby mortgaged in trust for the sd B., his heirs and assigns, subject to such equity of redemption as the same premises would have been subject to if such surrender had been made.

Declaration of trust of nominal reversion in mortgage of leaseholds by demise.

II. AND IT IS HEREBY agreed that the sd, *mortgagor*, his exors, admors, and assigns, shall henceforth stand possessed of the nominal reversion hereby reserved of the sd term of —— years in trust for the sd, *mortgagee*, his exors, admors, and

assigns, subject to such equity of redemption as may for the time being be subsisting by virtue of the proviso for redemption hereinbefore contained.

Proviso for reduction of interest on punctual payment. Variations for further advances.

III. PROVIDED ALWAYS, and it is hereby agreed and declared, that if the sd, *mortgagor*, his heirs, exors, admors, or assigns shall, on every half-yearly [quarterly] day on which the interest is hereinbefore made payable under this security, or within fourteen days after each of such days respectively, pay to the sd, *mortgagee*, his exors, admors, or assigns, [*mortgagees*, or the survivors or survivor of them, or the exors or admors of such survivor, their or his assigns], interest for the sd sum of £——, [and any further principal sum or sums which may hereafter be advanced by or become owing to him or them [them or him] under this security], or for so much thereof [respectively] as shall for the time being remain due and owing at the rate of £——, *the reduced rate*, per cent. per annum, then the sd, *mortgagee*, his exors, admors, or assigns, [*mortgagees*, or the survivors, *&c., as above*], shall accept interest for the sd sum of £——, [and any such further sum or sums as aforesd] or for so much thereof [respectively] as shall for the time being remain owing at the rate of £——, *the reduced rate*, per cent. per annum, in lieu of £——, *the higher rate*, per cent. per annum for every half [quarter of a] year for which such interest shall be paid to him or them [them or him] within such fourteen days as aforesd: PROVIDED ALSO, and it is hereby agreed, that in case the sd, *mortgagee*, his exors, admors, or assigns, [*mortgagees*, or the survivors, &c.,] shall become entitled to exercise the power of sale hereinafter contained, then the provision hereinbefore contained for the acceptance of interest at such reduced rate as aforesd shall cease to operate.

Proviso for continuance of

IV. PROVIDED ALWAYS, and it is hereby agreed and declared that (*a*) if the sd, *mortgagor*, his heirs, exors, admors, or as-

(*a*) If the mortgage is subject to a prior charge or charges, insert here, "In case and so long as no proceedings or steps shall

loan for a term certain.

Variations for further advances.

signs shall, on every half-yearly [quarterly] day on which the interest is hereinbefore made payable under this security until the —— day of ——, or within fourteen days after each of such days respectively, pay to the sd, *mortgagee*, his exors, admors, or assigns, [*mortgagees*, or the survivors or survivor of them, or the exors or admors of such survivor, their or his assigns], interest for the sd sum of £——, [and any further principal sum or sums which may hereafter be advanced by or become owing to him or them [them or him] under this security], or for so much thereof [respectively] as shall for the time being remain due and owing at the rate aforesd up to the same half-yearly [quarterly] days respectively, and shall perform and observe all the covenants and agreements herein contained, and on the part of the sd, *mortgagor*, his heirs, exors, admors, or assigns to be performed or observed (other than the covenant for the repayment of the sd principal sum of £—— on the sd —— day of —— next), then the sd, *mortgagee*, his exors, admors, or assigns, [*mortgagees*, or the survivors, &c.,] shall not, before the sd —— day of ——, call in the sd principal sum of £——, [or any further principal sum or sums which may hereafter be advanced or become owing as aforesd], or any part thereof [respectively].

Proviso that mortgagor shall not be at liberty to pay off for

v. PROVIDED ALWAYS, and it is hereby agreed and declared that the sd, *mortgagor*, his heirs, exors, admors, or assigns, shall not require or compel the sd, *mortgagee*, his exors, admors, or assigns, [*mortgagees*, or the survivors, &c., *as* be taken by, or on behalf of, the person or persons interested under the sd indre of mortgage of the —— day of —— [*or*, interested in any of the sd prior charges or incumbrances], or any of such persons, for exercising or enforcing any powers or remedies for recovering payment of any moneys secured by the sd indre of mortgage [*or*, recoverable in respect of any of the sd prior charges or incumbrances], against or upon the sd premises hereby mortgaged or any part thereof, and."

in last form,] to receive the sd sum of £——, [or any further principal sum or sums which may be advanced by or become owing to him or them [them or him] under this security] or any part thereof, before the sd —— day of ——. a term certain. Variation for further advances.

VI. PROVIDED ALWAYS, and it is hereby agreed and declared that (*b*) if the sd, *mortgagor*, his heirs, exors, admors, or assigns, shall pay to the sd, *mortgagee*, his exors, admors, or assigns, [*mortgagees*, or the survivors, &c., *as in form* IV.,] the sd sum of £——, *the principal*, with interest for the same at the rate aforesd to be computed from the date of these presents, by the instalments at the times and in the manner hereinafter mentioned, that is to say, the sd principal sum of £—— by —— equal [half-] yearly payments of £—— each, whereof the first is to be paid on the —— day of —— next and a subsequent instalment is to be paid on every —— day of —— [and —— day of ——], and the interest on the principal sum for the time being unpaid by half-yearly payments on the —— day of —— and the —— day of ——, whereof the first is to be made on the —— day of —— next, or, as to each such payment of principal and interest, shall make the same within fourteen days after the day so appointed for the payment thereof respectively, and if the sd, *mortgagor*, his heirs, exors, admors, or assigns, shall also duly observe and perform the covenants herein on his part contained (other than the covenant for payment of the sd principal sum of £—— on the —— day of —— next), then the sd, *mortgagee*, his exors, admors, or assigns, [*mortgagees*, or the survivors, &c.,] shall accept payment of the sd sum of £——, *the principal*, and interest by the instalments at the times and in manner aforesd. Proviso for payment by instalments.

VII. PROVIDED ALWAYS, that the sd, *mortgagor*, his heirs, exors, admors, or assigns, shall be at liberty at any time or times, upon giving at least one calendar month's notice in writing of his or their intention so to do, to pay off all or any part of the principal money for the time being owing on the security of these presents, so that not less than £—— be so Power to mortgagor to anticipate the instalments.

(*b*) See note (*a*), p. 713.

paid off at any one time, and that upon any payment of principal the interest on the principal be fully paid, [and that such partial payment by anticipation shall not interfere with the payments in regular course of the instalments of principal subsequently payable pursuant to the provision hereinbefore in that behalf contained, but shall only have the effect of accelerating the ultimate payment of the moneys remaining owing on this security].

Declaration that money belongs to mortgagees on a joint account. Variation for further advances.

VIII. PROVIDED ALWAYS, and it is hereby agreed and declared between and by the sd, *mortgagees*, that the sd sum of £—— so paid by them as aforesd was [and that any further sum or sums which may be hereafter advanced or paid by them or the survivors of them as hereinbefore mentioned will be] money belonging to them on a joint account [and accordingly that the sd, *mortgagees*, and the survivors or survivor of them, and the exors or admors of such survivor, their or his assigns, shall be entitled to the principal sum [or sums] and interest intended to be hereby secured, and their or his receipt shall be an effectual discharge for the same and every part thereof respectively (*c*)].

Proviso as to primary liability between principal and surety where the mortgaged property belongs to the surety.

IX. PROVIDED ALWAYS, and it is hereby agreed and declared that as between the sd, *principal*, his heirs, exors, and admors, on the one part, and the sd, *surety*, his heirs, exors, and admors, and the sd mortgaged premises, on the other part, the sd, *principal*, his heirs, exors, and admors, shall be primarily liable to the payment of the moneys intended to be hereby secured.

The same where the mortgaged property belongs to the principal, and the surety covenants for payment.

X. PROVIDED ALWAYS, and it is hereby agreed and declared that as between the sd, *principal*, his heirs, exors, and admors, and the sd mortgaged premises, on the one part, and the sd, *surety*, his heirs, exors, and admors, on the other part, the sd, *principal*, his heirs, exors, and admors, and the sd mortgaged premises, shall be primarily liable to the payment of the moneys intended to be hereby secured.

Proviso that mort-

XI. PROVIDED ALSO, and it is hereby agreed and declared

(*c*) The part in this bracket follows from what precedes, and might be omitted.

that the provision hereinbefore contained with respect to the primary liability to the payment of the sd moneys shall not affect the person or persons for the time being entitled to the same moneys, or so much thereof as shall remain unpaid, or in anywise preclude him, them, or any of them, from enforcing or having recourse to all or any remedies or means for recovering payment thereof which may be available under these presents at such times and in such order and manner as he or they shall think fit.

gagee is not to be affected by declaration as to primary incidence of debt as between principal and surety.

XII. PROVIDED ALWAYS, and it is hereby agreed and declared that, although as between the sd, *principal debtor*, and the sd, *surety*, the sd, *surety*, is only a surety for the sd, *principal*, yet as between the sd, *surety*, and the sd, *mortgagee*, [*mortgagees*,] the sd, *surety*, shall be considered as a principal debtor for all the principal moneys and interest intended to be hereby secured, so that the sd, *surety*, his heirs, exors, or admors, shall not be released by time being given to the sd, *principal*, his heirs, exors, or admors, or by any other variation in the provisions of these presents, or any other thing whatsoever whereby the sd, *surety*, his heirs, exors, or admors, as a surety or sureties only, would have been so released.

Proviso that surety shall be liable as a principal debtor.

XIII. TOGETHER WITH power for the sd, *assignee*, his exors, admors, and assigns, [*assignees*, or the survivors or survivor of them, or the exors or admors of such survivor, their or his assigns,] to demand, sue for, recover, and give valid receipts for the sd sum of £——, *the principal*, and all interest [due and] to become due for the same in the name or names of the sd, *assignor*, his exors or admors, and for the purposes aforesd, or any of them, to execute and do all such instruments and things as shall be deemed necessary or expedient.

Power of attorney in assignment of debt or chose in action.(*d*)

XIV. AND IT IS HEREBY agreed and declared that if the sd,

Trusts of monies

(*d*) As sec. 25, clause 6, of the Judicature Act, 1873, 36 & 37 Vic., c. 66, making a chose in action assignable, does not apply to assignments by way of mortgage, the insertion of a power of attorney in mortgages of legal choses in action is still necessary except in case of policies of assurance, as to which see the Policies of Assurance Act, 1867, 30 & 31 Vic., c. 144.

received in respect of policy or other chose in action or reversionary interest.

mortgagee, his exors, admors, or assigns, [*mortgagees*, or the survivors or survivor of them, or the exors or admors of such survivor, their or his assigns] shall receive any moneys [or any stocks, funds, shares, or securities, or other personal estate], in respect of the sd policy [policies], *or*, "the sd —— and premises hereby mortgaged," he or they [they or he] shall, by and out of the same [or the proceeds of the sale of the sd stocks, funds, shares or securities, which he or they [they or he] are hereby authorized to effect] in the first place reimburse himself or themselves [themselves or himself], or pay or discharge all costs and expenses incurred in obtaining the payment [or transfer] of and receiving the same, or in or about the execution of the trusts or powers of these presents or otherwise in relation to the premises: And in the next place pay or apply such moneys in or towards satisfaction of the moneys for the time being owing on the security of these presents, and then pay the surplus (if any) thereof unto the sd, *mortgagor*, his exors, admors, or assigns.

Receipt clause in mortgage of policy or other chose in action, or reversionary interest.

XV. PROVIDED ALWAYS, that the receipt of the sd, *mortgagee*, his exors, admors, or assigns [*mortgagees*, or the survivors or survivor of them, or the exors or admors of such survivor, their or his assigns], for any moneys [stocks, funds, shares, or securities, or other personal estate] paid [or transferred] to him or them [them or him] in respect of the sd policy [policies], *or*, "the sd —— and premises hereby mortgaged," shall effectually discharge the assurance society, *or*, "trustees or trustee," or persons or person paying [or transferring] the same therefrom, and from being concerned to see to the application or being answerable for the loss or misapplication thereof, and that the assurance society, *or*, "trustees or trustee," or persons or person, paying [or transferring] the same, shall not be bound or concerned to inquire whether any default has been made in payment of any principal moneys or interest intended to be hereby secured, or whether any money remains owing on this security, or otherwise as to the propriety of such payment [or transfer] as aforesd.

Covenant to keep up

XVI. AND THE SD, *mortgagor*, doth hereby for himself, his

heirs, exors, and admors, covenant with the sd, *mortgagee*, his, [*mortgagees*, their] exors, admors, and assigns, that he the sd, *mortgagor*, will not do or suffer anything whereby the sd policy [policies] of assurance [or either of them] may become void or voidable, or the sd, *mortgagee*, his, [*mortgagees*, their] exors, admors, or assigns, may be prevented from receiving any of the monies to become payable thereunder [respectively] or any part thereof, and that if the sd policy [policies, or either of them] shall become voidable, he the sd, *mortgagor*, will immediately thereupon at his own cost do all things necessary for restoring or keeping on foot the same: AND THAT if the sd policy [policies, or either of them], or any new policy or policies to be effected as hereinafter is mentioned, shall become void, the sd, *mortgagor*, will immediately thereupon at his own cost effect or enable the sd, *mortgagee*, his, [*mortgagees*, their] exors, admors, or assigns, to effect a new policy or policies on his life in his or their name or names, [their or his names or name] in such sum or sums as would have been payable under the policy or policies which shall have become void if the sd, *mortgagor*, had then died: AND THAT every such substituted policy and the monies to become payable under the same shall be subject to the proviso for redemption hereinbefore contained, and be held and applied upon the trusts and for the purposes hereby declared and expressed concerning the sd original policy [policies] and the monies to become payable thereunder: AND FURTHER THAT he the sd, *mortgagor*, will during the continuance of this security duly and punctually pay the annual premium or premiums and other sum or sums of money (if any) necessary for keeping on foot the sd original policy [policies], and any substituted policy or policies, and will forthwith deliver the receipt for every such payment to the sd, *mortgagee*, his, [*mortgagees*, their] exors, admors, or assigns: AND THAT if the sd, *mortgagor*, shall at any time neglect or refuse to make the payments aforesd, or any of them, it shall be lawful for the sd, *mortgagee*, his, [*mortgagees*,

life policy or policies.

To renew.

New policies to be subject to security.

To pay premiums.

Power to mortgagee to pay premiums

on mortgagor's default.

their] exors, admors, or assigns, to pay the same: And that all moneys and expenses which shall be paid or incurred by him or them [them or him] in keeping on foot the sd original policy [policies], or in effecting or keeping on foot any such substituted policy or policies as aforesd or otherwise in relation to the premises, with interest for the same at the rate of £—— per cent. per annum from the time or respective times of the same having been paid or expended, shall be repaid to him or them [them or him] by the sd, *mortgagor*, his heirs, exors, or admors on demand: And in the meantime and until repayment shall be charged upon the sd original policy [policies], and any substituted policy or policies, and the moneys to become payable thereunder respectively [and the sd other mortgaged premises].

That the same shall be repaid by mortgagor,

and in the meantime be a charge on mortgaged property.

The same. Short form.

xvii. And the mortgagor doth hereby for himself, his heirs, exors, and admors, covenant with the mortgagee[s], that he the mortgagor will not do or suffer anything whereby the sd policy may become void or voidable: And if the same shall become void, will immediately, at his own cost, effect a new policy on his life, in the name[s] of the mortgagee[s] for the sum of £—— at the least, or enable him [them] so to do: And that every such substituted policy, and the moneys to become payable thereunder, shall be subject to this security: And that the mortgagor will pay all premiums and moneys necessary for keeping on foot the sd original or any substituted policy on the first day on which the same ought to be paid, and will forthwith produce the receipt for every such payment to the mortgagee[s], and that in default of his so doing, the mortgagee[s] may make such payments, and that all sums paid by him [them] for that purpose, or for effecting any new policy with interest for the same at the rate of £—— per cent. per annum shall be repaid by the mortgagor on demand, and in the meantime shall be a charge on the sd policy [and other mortgaged premises].

Covenant to insure against fire and repair

xviii. And the sd, *mortgagor*, doth hereby for himself, his heirs, exors, and admors, covenant with the sd, *mortgagee*, his, [*mortgagees*, their] exors, admors, and assigns, that he

Applicable to buildings or chattels. (*e*)

the sd, *mortgagor*, his heirs, exors, admors, or assigns, will during the continuance of the present security keep the sd messuages, buildings [plant, machinery, furniture, effects], and premises comprised in or subject to this security, and all property which may from time to time be so comprised or subject, in a good state of repair [*add in case of machinery*, and in perfect working order], and also insured against loss or damage by fire in the sum of £—— at the least [in the —— insurance company, or] in some insurance office of repute, to be approved of in writing from time to time by the sd, *mortgagee*, [*mortgagees*, their] his exors, admors, or assigns, [*where part of the property consists of anything other than buildings* (*f*), *add*, in the name or names [names or name] of the sd, *mortgagee*, his, [*mortgagees*, their] exors, admors, or assigns], and will duly and punctually pay all premiums and moneys necessary for effecting and keeping up the sd insurance, and will on demand produce to the sd, *mortgagee*, his [*mortgagees*, their] exors, admors, or assigns, the policy or policies of such insurance, and the receipt for every such payment: And that if default shall at any time be made by the sd, *mortgagor*, his heirs, exors, admors, or assigns, in effecting or keeping up such insurance as aforesd, or in keeping the sd premises or any part thereof in good and substantial repair [*add in case of machinery*, and in perfect working order], it shall be lawful for the sd, *mortgagee*, [*mortgagees*, their] his exors, admors, or assigns to insure and keep insured the sd premises or any part thereof in any sum not exceeding £——, (or as the case may require), to repair and keep in repair the same, [*for machinery add*, and put the same into perfect working order]: And that all moneys expended by him or them [them or him] for such purpose, together with interest thereon at the rate of £—— per cent. per annum from the time of the same having been expended, shall

(*e*) A power to the mortgagee to insure is given by Lord Cranworth's Act, 23 & 24 Vic., c. 145, s. 11, as to which see Davidson's Prec., vol. ii., part 2, p. 608, note, 3rd ed.

(*f*) *Lees* v. *Whiteley*, L. R. 2 Eq. 143.

on demand be repaid to him or them [them or him] by the sd, *mortgagor*, his heirs, exors, admors, or assigns, and until such repayment shall be a charge upon all the sd mortgaged premises; [*add, where part of the property consists of anything other than buildings* (*g*), "And that all moneys which may be received by virtue of any such policy shall be applied in making good the loss or damage," *or*, "and that all moneys received by virtue of any such policy in respect of the destruction or damage by fire of any houses or buildings thereby insured shall be applied in making good the loss or damage, and any monies received in respect of the destruction or damage by fire of any property other than houses or buildings shall either be applied in making good the loss or damage, or if so required, by notice in writing given by the sd, *mortgagee*, his [*mortgagees*, their] exors, admors, or assigns, to the sd, *mortgagor*, his heirs, exors, admors, or assigns, or left on the sd mortgaged premises within —— days after the occurrence of such loss or damage, shall be applied in or towards the discharge of the moneys owing on this security"].

Covenant for renewal of lease.

XIX. And the sd, *mortgagor*, doth hereby for himself, his heirs, exors, and admors, covenant with the sd, *mortgagee*, his, [*mortgagees*, their] exors, admors, and assigns, that he the sd, *mortgagor*, his exors, admors, or assigns, will from time to time during the continuance of this present security, at his or their own cost, procure the present lease, [*add, if the lease contains a perpetual covenant for renewal*, "and any renewed lease or leases which may hereafter be obtained"] of the sd leasehold premises hereby mortgaged, to be renewed pursuant to the covenant in that behalf contained in the sd present lease [or to be contained in any future lease of the sd premises]; the sd, *mortgagee*, his, [*mortgagees*, their] exors, admors, or assigns, doing or concurring in all such acts as may be necessary or proper for obtaining such renewals: And that the sd, *mortgagor*, his exors, admors, or assigns, will immediately after obtaining [every] such re-

(*g*) See *Ex p. Goreley*, 4 De G. J. & S. 477; *Lees* v. *Whiteley*, L. R. 2 Eq. 143; Elphinstone, Introd. Conv. 155.

newed lease, assign the same and the premises therein comprised to the sd, *mortgagee*, his, [*mortgagees*, their] exors, admors, and assigns, subject to such equity of redemption as shall then be subsisting by virtue of these presents, and in the meantime will stand possessed of the renewed lease in trust for the sd, *mortgagee*, his, [*mortgagees*, their] exors, admors, and assigns, for securing the moneys intended to be hereby secured: And further that if the sd, *mortgagor*, his exors, admors, or assigns, shall refuse or neglect to renew the sd [any such] lease, and to pay the fines, fees, and costs attending the renewal thereof, it shall be lawful for the sd, *mortgagee*, his exors, admors, or assigns, [*mortgagees*, or the survivors or survivor of them, or the exors or admors of such survivor, their or his assigns] to obtain such renewal in his or their [their or his] own name or names [names or name] or otherwise; And that all moneys expended by him or them [them or him] in or about any such renewal, with interest thereon at the rate of £—— per cent. per annum from the time or respective times of the expenditure thereof, shall be repaid to him or them [them or him] by the sd, *mortgagor*, his heirs, exors, admors, or assigns, on demand, and in the meantime shall be a charge upon the renewed lease and the property therein comprised [and the sd other mortgaged premises].

Power of leasing for twenty-one years to be exercised by mortgagor till mortgagee enters into possession, and afterwards by mortgagee.

xx. Provided always, and it is hereby agreed and declared that it shall be lawful for the sd, *mortgagor*, his heirs and assigns, from time to time to demise the whole or any part or parts of the sd premises hereby mortgaged, which shall not have been sold or entered into possession of by the sd, *mortgagee*, his, [*mortgagees*, their] heirs, exors, admors, or assigns, and the equity of redemption whereof shall not have been foreclosed, and for the, *mortgagee*, his exors, admors, or assigns, [*mortgagees*, or the survivors or survivor of them, or the exors or admors of such survivor, their or his assigns], from time to time to demise the whole or any part or parts of the sd mortgaged premises, which he or they [they or he] shall have entered into possession of, for any

term of years not exceeding twenty-one years, to take effect in possession or within six calendar months from the date of the lease, upon such terms and conditions as may be deemed expedient [(*f*) so as there be reserved in every such lease the best yearly rent or rents to be incident to the reversion that can be reasonably obtained without taking anything in the nature of a fine or premium, and so as there be contained in every such lease a condition of re-entry for non-payment, within a reasonable time to be therein specified, of the rent or rents thereby reserved]: And the sd, *mortgagor*, doth hereby covenant with the sd, *mortgagee*, his, [*mortgagees*, their] exors, admors, and assigns, that he the sd, *mortgagor*, his heirs or assigns, will deliver the counterpart, if any, of every such lease to him or them [them or him] forthwith after the execution thereof by the lessee or lessees. (*g*)

(*f*) Where brevity is of importance, substitute "at rack-rent" for the words in this bracket. It is not considered necessary in this case that it should be made a condition of the validity of the lease that the lessee should execute a counterpart.

(*g*) It is occasionally, where the mortgage comprises house property or a building estate, desirable to insert fuller powers of leasing, entering into contracts for leases, accepting surrenders of leases, and management, which may be founded on the forms in SETTLEMENTS. The commencement of the powers may be in the form following :—

"PROVIDED ALWAYS, and it is hereby agreed and declared, that it shall be lawful for the sd, *mortgagor*, his heirs and assigns, at any time or times hereafter, before the sd, *mortgagee*, his [*mortgagees*, their] heirs, exors, admors, or assigns shall have either sold or entered into possession of the whole of the sd premises hereby mortgaged, or have foreclosed the equity of redemption thereof, to exercise over the whole or any part thereof which shall not have been sold or entered into possession of: And that it shall be lawful for the, *mortgagee*, his exors, admors, or assigns [*mortgagees*, or the survivors, &c.], at any time or times hereafter during the continuance of this security to exercise over the whole or any part of the sd mortgaged premises which he or they [they or he] shall have entered into possession of, the powers following, that is to say, First, a power, &c."

Power to mortgagee to grant leases.

XXI. PROVIDED ALWAYS, and it is hereby agreed and declared that it shall be lawful for the sd, *mortgagee*, his exors, admors, and assigns, [*mortgagees*, or the survivors or survivor of them, or the exors or admors of such survivor, their or his assigns], at any time or times hereafter during the continuance of this security, and whether he or they [they or he] shall or shall not have entered into possession of the sd mortgaged premises, to demise all or any part of the sd premises for any term of years, &c., *continue as in last preceding form, omitting the covenant at the end.*

Attornment by mortgagor in possession.

XXII. AND THIS INDRE ALSO WITNESSETH, that for the consideration aforesd the sd, *mortgagor*, doth hereby attorn and become tenant from year to year to the sd, *mortgagee*, his, [*mortgagees*, their] heirs (*h*) and assigns, of such part or parts of the sd mortgaged premises as are now or shall from time to time during the continuance of this security be in the occupation of the sd, *mortgagor*, at the yearly rent of £——, [*or*, at a yearly rent equal to and varying in amount with the yearly interest from time to time payable under this security], clear of all deductions, to be paid by equal half-yearly [quarterly] payments on the respective days hereinbefore appointed for the payment of the interest under this security, but so that such rent shall be accepted in or towards satisfaction of such interest: PROVIDED ALWAYS, and it is hereby agreed that it shall be lawful for the sd, *mortgagee*, his, [*mortgagees*, their] heirs (*h*) or assigns, at any time without giving any previous notice in that behalf, to enter into and upon and take possession of the sd premises, whereof the sd, *mortgagor*, has attorned tenant as aforesd, and to determine the tenancy created by such attornment.

Power of distress for interest.

XXIII. AND THE SD, *mortgagor*, doth hereby grant to the sd, *mortgagee*, his, [*mortgagees*, their] exors, admors, and assigns, that in case the interest for the time being payable under this security, or any part thereof, shall at any time be in arrear and unpaid for —— days after either of the days

(*h*) If leaseholds, for "heirs" substitute "exors, admors."

hereinbefore appointed for payment thereof, it shall be lawful for the sd, *mortgagee*, his exors, admors, or assigns, [*mortgagees*, or the survivors or survivor of them, or the exors or admors of such survivor, their or his assigns], into and upon the sd mortgaged premises, or any part thereof, to enter, and for the interest so in arrear and unpaid, and all costs and expenses incurred by the non-payment thereof (including the costs of distress) to distrain, and the distress and distresses then and there found to dispose of in due course of law, as landlords may do for rent reserved upon leases, to the intent that the sd arrears of interest, costs, and expenses may thereby be satisfied. [*If there is an attornment clause, add,* Provided that the power of distress hereinbefore contained shall not prejudice or affect but shall be collateral and additional to any power of distress which may exist by virtue of the tenancy created by the attornment hereinbefore contained.]

Appointment of receiver. (*i*)

XXIV. AND THIS INDRE ALSO WITNESSETH, that in consideration of the premises the sd, *mortgagor*, with the concurrence of the sd, *mortgagee*, [*mortgagees*,] doth hereby appoint the sd, *receiver*, to be receiver, agent, and attorney, from time to time, in the name of the sd, *mortgagor*, or otherwise to receive the rents and profits of the sd hereditaments hereby mortgaged, [*if the appointment of the receiver is by a separate deed, say,* "of the hereditaments mentioned in the schedule hereto"], from the present and future tenants and occupiers thereof and the persons liable to pay the same respectively, and in case of the non-payment thereof to use all or any lawful remedies for recovering and obtaining payment of the same, and to do all things necessary or proper for recovering and receiving the same as fully and effectually as the sd, *mortgagor*, could do: AND the sd, *mortgagor*, doth hereby direct the tenants and occupiers of the sd premises respectively, and the persons liable to pay the same respectively, to pay the rents and profits of the sd premises unto

Direction to tenants.

(*i*) A power to the mortgagee to appoint a receiver is given by Lord Cranworth's Act, 23 & 24 Vic., c. 145, s. 11.

the sd, *receiver*, and to any future receiver to be appointed as is hereinafter mentioned: And doth hereby declare that the receipt of the sd receiver for the time being shall be an effectual discharge to such tenants, occupiers, and persons for such rents and profits: And it is hereby agreed that the sd receiver for the time being shall by and out of the rents and profits received by him in the first place pay all rates, taxes, charges, assessments, and outgoings for the time being payable in respect of the sd premises, and which shall not be otherwise paid, and the expense of insuring against loss or damage by fire any buildings or other property which he shall think fit to insure [*if there be any prior charges, add,* and keep down the interest on all principal moneys, and the yearly sums, if any, for the time being charged upon or payable out of the sd premises or any part or parts thereof, and having priority over the moneys intended to be secured by these presents [the sd indre of, &c.], and which interest and yearly sums respectively shall not be otherwise paid, but so nevertheless as not to give the same respectively any further or other security than they respectively already possess]; and in the next place deduct and retain for his own use so much, not exceeding £5 for every £100 received, as in the opinion of the sd, *mortgagee*, his exors, admors, or assigns, [*mortgagees*, or the survivors or survivor of them, or the exors or admors of such survivor, their or his assigns], the sd receiver shall be reasonably entitled to for his trouble and expenses; and in the next place pay to the sd, *mortgagee*, his exors, admors, or assigns, [*mortgagees*, or the survivors, &c.], by equal half-yearly [quarterly] payments on the —— day of ——, &c., the interest from time to time accruing due on the security of these presents [the sd indre of, &c.], and shall pay the surplus, if any, of the sd rents and profits unto the sd, *mortgagor*, his heirs, [*or if leaseholds*, exors, admors], or assigns: Provided always that the sd receiver shall, if required by the sd, *mortgagee*, his exors, admors, or assigns, [*mortgagees*, or the survivors, &c.], from time to time pay

Receiver's receipt to be a discharge.

Trusts of rents received.

Receiver to pay money into bank.

such surplus, or any part thereof, into the —— Bank, at ——, or some other bank to be approved of by him or them, [them or him], as a fund to provide for the interest then next accruing due to him or them, [them or him], under this [the sd] security, and any other payments hereinbefore authorized or required to be made which may become payable in the meantime other than the payment to the sd, *mortgagor*, his heirs or assigns, and shall also, if required as aforesd, from time to time retain such a sum in the sd Bank as shall be deemed proper for the purpose of keeping the account open: AND THE sd, *receiver*, doth hereby covenant with the sd, *mortgagee*, his [*mortgagees*, their] exors, admors, and assigns, and also as a separate covenant with the sd, *mortgagor*, his heirs, [*or if leaseholds*, exors, admors], and assigns, that he the sd, *receiver*, will, so long as he shall be receiver of the sd rents and profits, use his utmost endeavours to collect and receive the same in manner aforesd: AND THE sd, *mortgagor*, doth hereby covenant with the sd, *mortgagee*, his, [*mortgagees*, their] exors, admors, and assigns, that he the sd, *mortgagor*, will not without the consent in writing of the sd, *mortgagee*, his exors, admors, or assigns, [*mortgagees*, or the survivors, &c.], revoke the powers or authorities hereby given to the sd receiver for the time being, or any of them, or do or suffer anything whereby such powers or authorities, or any of them, may become void or of no effect, or obstruct the sd receiver in recovering or receiving any of the sd rents and profits during the continuance of this security: AND FURTHER that in case the sd receiver for the time being shall die, or be disqualified to receive the sd rents and profits, or shall refuse or neglect to perform the duties hereby imposed on him, or shall misbehave himself whilst any moneys shall remain owing on this security, then and in any of such cases, except the death of the sd receiver for the time being, the sd, *mortgagor*, his heirs, [*or*, exors, admors], or assigns, will join with the sd, *mortgagee*, his exors, admors, or assigns, [*mortgagees*, or the survivors, &c.], in removing the

Covenant by receiver.

Covenants by mortgagor not to revoke powers without consent.

To concur in appointment of new receiver.

sd receiver from the sd employment, and will in any of such cases appoint such other fit person in the place of the receiver so dying or being removed as the sd, *mortgagee*, his exors, admors, or assigns, [*mortgagees*, or the survivors, &c.], shall nominate to receive and apply the sd rents and profits in manner aforesd: AND THAT in case the sd, *mortgagor*, his heirs, [*or*, exors, admors], or assigns, shall refuse or neglect so to do within one calendar month after being required in that behalf in writing by the sd, *mortgagee*, his exors, admors, or assigns, [*mortgagees*, or the survivors, &c.], or in case the sd, *mortgagor*, his heirs, [*or*, exors, admors], or assigns, shall from any disability be unable to remove or nominate a receiver, then it shall be lawful for the sd, *mortgagee*, his exors, admors, or assigns, [*mortgagees*, or the survivors, &c.], without the concurrence of the sd, *mortgagor*, his heirs, [*or*, exors, admors], or assigns, to remove the receiver for the time being, and to appoint some fit person to receive and apply the sd rents and profits in manner aforesd: PROVIDED ALWAYS, and it is hereby agreed that the sd, *mortgagee*, his, [*mortgagees*, their] heirs, exors, admors, or assigns, or any of them, shall not be answerable for any loss or misapplication of the sd rents and profits, or any part thereof, by reason of any default, neglect, or breach of trust, of or by the sd receiver for the time being, but that such loss and misapplication, and every receiver's salary, shall be wholly borne and paid by the sd, *mortgagor*, his heirs, exors, admors, or assigns: [PROVIDED ALSO, and it is hereby agreed that the sd receiver shall not act or assist in the execution of the trusts or powers hereinbefore contained, unless and until some half yearly [quarterly] payment of interest owing on the security of these presents [the sd indre of, &c.] shall be wholly or partially in arrear for one calendar month.]

Power for mortgagee to appoint on mortgagor's refusal.

Mortgagee not to be liable for default of receiver.

Receiver not to act until interest in arrear.

XXV. PROVIDED ALSO, that the sd, *mortgagee*, his, [*mortgagees*, their] heirs, exors, admors, and assigns, or any of them, shall not be answerable for any involuntary losses which may happen in or about the exercise or execution of the power

Mortgagee's indemnity clause.

of sale or any of the powers or trusts [*if the statutory powers of sale, &c. are relied on, say,* conferred by or arising under the statute 23 & 24 Vic., c. 145, *or*] hereinbefore contained.

Interpretation clause.

XXVI. PROVIDED LASTLY, and it is hereby declared that unless such interpretation shall be excluded by or repugnant to the context, the expression "the mortgagor," as hereinbefore used, shall include his heirs, [*or in case of leaseholds or personalty,* "exors, admors,"] and assigns, and the expression "the mortgagee, [mortgagees]" shall include his exors, admors, and assigns, [the survivors or survivor of them, and the exors and admors of such survivor, their or his assigns] (*l*).

COVENANTS FOR TITLE.

I.

ORDINARY FORM *for* FREEHOLDS *or* COPYHOLDS. VARIATIONS *for a Mortgage* SUBJECT *to* PRIOR

(*l*) Where this interpretation clause is used, or where the words "mortgagor" and "mortgagee" are similarly defined at the commencement of the deed (as in Precedent VIII., p. 752), the words "heirs and assigns" in the case of the mortgagor, and "exors, admors, and assigns" in the case of the mortgagee, will be omitted throughout; but wherever the words "heirs, exors, and admors" occur together, whether in the case of the mortgagor or mortgagee (as in the commencement of the covenants and in the proviso for redemption), those words should be retained, and in a mortgage of freeholds or copyholds, inasmuch as the word "mortgagee," when used alone, is defined to include his *personal* representatives and not his *heirs*, the words "heirs and assigns" must, in the case of the *mortgagee*, be inserted in the conveyance of the estate, and covenants for title, and wherever those words are used in the full forms. The risk of clerical errors arising from the similarity of the words "mortgagor" and "mortgagee" is so considerable that it might be desirable to use some other expressions, such as "debtor" and "creditor," which are free from this objection.

CHARGES *or* INCUMBRANCES; *also for the case where* OTHER PERSONS *besides the Mortgagor* JOIN *in the* CONVEYANCE; *and where the mortgage-money is* PAYABLE *on* DEMAND.

For right to convey.

AND THE SD, *mortgagor*, doth hereby for himself, his heirs, exors, and admors, covenant with the sd, *mortgagee*, his [*mortgagees*, their] heirs and assigns, that he, the sd, *mortgagor*,(*a*) now has full power to grant(*b*) all and singular the sd hereditaments and premises hereby mortgaged to the use of the sd, *mortgagee*, his [*mortgagees*, their] heirs and assigns, [*if copyhold*, according to the custom of the sd manor](*c*); AND THAT, in case default shall be made in payment of the sd sum of £—— or the interest thereof, or any part thereof respectively, on the sd —— day of —— next, (*d*) it shall be lawful for the sd, *mortgagee*, his, [*mortgagees*, their] heirs and assigns, to enter into and upon the same premises, and every or any part thereof, and the same thenceforth to hold and quietly enjoy, and to receive the rents and profits thereof,(*e*) without any interruption, claim, or demand whatsoever by the sd, *mortgagor*, his heirs or assigns, or any other person or persons whomsoever(*f*):

For quiet enjoyment after default.

(*a*) If other parties join in the conveyance, add here, "with the concurrence of the sd, *other conveying parties*."

(*b*) Or "appoint," or "appoint and grant," or "surrender," as the case may be.

(*c*) If the mortgage is subject to a prior charge or charges, add, "subject to the sd indre of mortgage of the —— day of ——, and the sum of £—— and interest thereby secured as aforesd," or "subject to the sd respective charges and incumbrances to which the mortgage hereby made is hereinbefore expressed to be subject," or "subject as aforesd."

(*d*) If the mortgage-money is payable on demand, the words "on demand" will be substituted for the words "on the sd —— day of —— next."

(*e*) If the mortgage is subject to a prior charge or charges, add "subject as aforesd."

(*f*) If the mortgage is subject to a prior charge or charges, add,

Free from incumbrances.

For further assurance.

AND THAT, free and discharged from or otherwise by the sd, *mortgagor*, his heirs, exors, or admors, sufficiently indemnified against all estates, incumbrances, claims and demands whatsoever (*g*): AND FURTHER THAT he, the sd, *mortgagor*, and his heirs, and every other person having or claiming any estate, right, or interest, in or to the sd premises, or any of them, or any part thereof, will at all times hereafter, at the cost until foreclosure or sale of the sd, *mortgagor*, his heirs, exors, or admors, and afterwards of the person or persons requiring the same, execute and do all such assurances and acts whatsoever for further or more effectually assuring the sd premises, or any of them, or any part thereof, to the use of the sd, *mortgagee*, his [*mortgagees*, their] heirs and assigns, [according to the custom of the sd manor] (*a*), as by the sd, *mortgagee*, his [*mortgagees*, their] heirs, exors, admors, or assigns, shall be reasonably required.

II.

SHORT FORM *for* FREEHOLDS *or* COPYHOLDS (*b*).

For right to convey.

AND THE mortgagor doth hereby for himself, his heirs, exors, and admors, covenant with the mortgagee his [mort-

"other than and except any person or persons claiming in respect of the sd mortgage," or "in respect of any of the prior charges or incumbrances aforesd."

(*g*) If the mortgage is subject to a prior charge or charges, add, "save and except the sd indre of mortgage," or "the respective prior charges and incumbrances aforesd, and claims and demands in respect thereof."

(*a*) If the mortgage is subject to a prior charge or charges, add, "subject as aforesd."

(*b*) This form is adapted to a case in which the interpretation clause, p. 730, is used. See the note to that clause. For variations when there are prior charges, and when there are several conveying parties, see Form I.

gagees their] heirs and assigns, that he, the mortgagor now has power to [grant] all the sd premises hereby mortgaged to the use of the mortgagee his, [mortgagees their] heirs and assigns: AND THAT it shall be lawful for the mortgagee his, [mortgagees their] heirs and assigns, to enter upon and quietly hold and enjoy the same premises accordingly without any interruption by the mortgagor, or any person whomsoever: AND THAT discharged from or otherwise by the mortgagor indemnified against all incumbrances whatsoever, [*or, instead of the two last clauses*, free from incumbrances:] AND THAT he, the mortgagor, and every other person having or claiming any estate or interest in the said premises, will at all times, at the cost until foreclosure or sale of the mortgagor, and afterwards of the person or persons requiring the same, execute and do all such assurances and acts for further assuring the sd premises or any part thereof to the use of the mortgagee his, [mortgagees their] heirs and assigns, as shall be reasonably required.

For quiet enjoyment.

Free from incumbrances.

For further assurance.

III.

LEASEHOLDS *mortgaged by* ASSIGNMENT. VARIATIONS *as in form* I., *also for Mortgage by* UNDERLEASE, *and for* SEVERAL LEASES.

AND THE SD, *mortgagor*, doth hereby, for himself, his heirs, exors, and admors, covenant with the sd, *mortgagee*, his, [*mortgagees*, their] exors, admors, and assigns, that the hereinbefore recited indre of lease is now a valid and subsisting lease of the sd hereditaments and premises, [*or, if several leases*, the hereinbefore recited indres of lease of, &c., are respectively now valid and subsisting leases of the sd respective hereditaments and premises,] hereby mortgaged, and in no wise forfeited, surrendered, or become void or voidable: AND THAT the rent [respective rents], and covenants and agreements on the part of the lessee [respective

That lease is good.

That rent and covenants have

been paid and performed.

lessees], and conditions by and in the sd indre [respective indres of lease reserved and contained, have been duly paid, observed, and performed up to the date of these presents: AND THAT, he, the sd, *mortgagor*, (*c*) now has full power to assign [demise] all and singular the sd mortgaged premises unto the sd, *mortgagee*, his, [*mortgagees*, their] exors, admors, and assigns, for all the residue now unexpired of the sd term of —— years [respective terms of —— years and —— years], [less one day], in manner (*d*) aforesd: AND FURTHER, that in case default shall be made in payment of the sd sum of £—— or the interest thereof, or any part thereof respectively, on the sd —— day of —— next, (*e*) it shall be lawful for the sd, *mortgagee*, his, [*mortgagees*, their] exors, admors, and assigns, to enter into and upon the sd premises, and every or any part thereof, and the same thenceforth during the same term [respective terms] to hold and quietly enjoy, and to receive the rents and profits thereof, (*f*) without any interruption, claim, or demand whatsoever by the sd, *mortgagor*, his exors, admors, or assigns, or any other person or persons whomsoever (*g*): AND THAT free and absolutely discharged from or otherwise by the sd, *mortgagor*, his heirs, exors, or admors, sufficiently indemnified against all estates, incumbrances, claims, and demands whatsoever (*a*): AND FURTHER, that he the sd, *mortgagor*, his exors and admors, and every other person having or claiming any estate, right, or interest

For right to assign or demise.

For quiet enjoyment after default.

Free from incumbrances.

For further assurance.

(*c*) If other persons besides the mortgagor join in the assurance, add here, "with the concurrence of the sd, *other conveying parties*.

(*d*) If the mortgage is subject to a prior charge or charges, add, as in p. 731, note (*c*), above.

(*e*) If the mortgage-money is payable on demand, the words "on demand" will be substituted for the words "on the sd —— day of —— next."

(*f*) If the mortgage is subject to a prior charge or charges, say, "subject as aforesd."

(*g*) If the mortgage is subject to a prior charge or charges, add as in page 731, note (*f*) above.

(*a*) If the mortgage is subject to a prior charge or charges, add, "save as aforesd."

in or to the sd premises, or any of them, or any part thereof, will at all times hereafter at the cost until foreclosure or sale of the sd, *mortgagor*, his exors or admors, and afterwards of the person or persons requiring the same, execute and do all such assurances and acts whatsoever for further or more effectually assuring the sd premises, or any of them, or any part thereof, unto the sd, *mortgagee*, his, [*mortgagees*, their] exors, admors, and assigns, for all the residue which shall be then unexpired of the sd term [respective terms,] [except the sd nominal reversion of one day hereby reserved, and also if thereunto required the sd reversion](*b*) as by the sd, *mortgagee*, his, [*mortgagees*, their] exors, admors, or assigns, shall be reasonably required: And also that he, the sd, *mortgagor*, his heirs, exors, admors, or assigns will, during the continuance of this security, duly pay the rent [respective rents] reserved by, and observe and perform the covenants and agreements on the part of the lessee [respective lessees] and conditions contained in the sd indre [respective indres] of lease, and will keep the sd, *mortgagee*, his, [*mortgagees*, and every of them, their and every of their] heirs, exors, admors, and assigns, indemnified against the same, and all actions, proceedings, costs, damages, claims, and demands in respect thereof.

For payment of rent and performance of covenants of lease.

IV.

SHORT Form *for* Leaseholds *mortgaged by* Assignment. Variations *for mortgage by* Underlease (*c*).

And the mortgagor doth hereby for himself, his heirs, exors, and admors, covenant with the mortgagee[s], that the sd lease is now valid and subsisting: And that the rent and

That lease is good.

That rent

(*b*) If the mortgage is subject to a prior charge or charges, say, "subject as aforesd."

(*c*) This form is adapted to a case in which the interpretation clause, p. 730, is used. See the note to that clause. For variations applicable to different circumstances see the last form.

and covenants have been paid and performed. covenants on the part of the lessee, and conditions by and in the same reserved and contained, have been duly paid, performed, and observed, up to the date of these presents: And that the mortgagor now has power to assign [demise] all the sd premises hereby mortgaged unto the mortgagee[s], for the term and in manner aforesd: And that it shall be lawful for the mortgagee[s] to enter upon and quietly hold and enjoy the same premises, and receive the rents and profits thereof without any interruption by any person whomsoever: And that discharged from or otherwise by the mortgagor indemnified against all incumbrances whatsoever [*or instead of the two last clauses*, free from incumbrances:] And that he, the mortgagor, and every other person having or claiming any estate or interest in the sd premises, will at all times, at the cost until foreclosure or sale of the mortgagor, and afterwards of the person or persons requiring the same, execute and do all such assurances and acts for further assuring the sd premises, or any part thereof, to the mortgagee[s], for the residue of the sd term [except the sd nominal reversion of one day hereby reserved, and also, if required, the sd reversion] as shall be reasonably required: And that the mortgagor will, during the continuance of this security, pay the rent reserved by, and perform and observe the covenants on the part of the lessee, and conditions contained in the sd lease, and will keep the mortgagee[s] indemnified in respect thereof.

For right to assign or demise.

For quiet enjoyment.

Free from incumbrances.

For further assurance.

For payment of rent, &c.

V.

FREEHOLDS, Copyholds, *and* Leaseholds. Variations *as in form* I.

That lease is good, &c. And the sd, *mortgagor*, doth hereby for himself, his heirs, exors, and admors, covenant with the sd, *mortgagee*, his, [*mortgagees*, their] heirs, exors, admors, and assigns, that, [*lease is good, and rent and covenants paid and performed, as*

in No. III.]: And that he the sd, *mortgagor*, (*d*) now has full power to grant (*e*) all such of the sd hereditaments and premises hereby mortgaged as are of freehold tenure to the use of the sd, *mortgagee*, his [*mortgagees*, their] heirs and assigns in manner aforesd (*f*), and to surrender all such of the sd premises hereby mortgaged as are of copyhold or customary tenure to the use of the sd, *mortgagee*, his, [*mortgagees*, their] heirs and assigns, in manner aforesd, according to the custom of the sd manor (*f*), and also to assign [demise] all such of the sd premises hereby mortgaged as are of leasehold tenure unto the sd, *mortgagee*, his [*mortgagees*, their] exors, admors, and assigns, for all the residue now unexpired of the sd term of —— years [less one day] in manner aforesd (*f*): And further, that in case default shall be made in payment of the sd sum of £——, or the interest thereof, or any part thereof, respectively, on the sd —— day of —— next, (*a*) it shall be lawful for the sd, *mortgagee*, his, [*mortgagees*, their] heirs, exors, admors, and assigns respectively, to enter into and upon the sd mortgaged hereditaments and premises, or any of them, or any part thereof respectively, and the same thenceforth to hold and quietly enjoy, and to receive the rents and profits thereof accordingly (*b*), without any interruption, claim, or demand

For right to convey.

For quiet enjoyment after default.

(*d*) If other parties join in conveying, add here, "with the concurrence of the sd, *other parties*."

(*e*) Or "appoint," or "appoint and grant," as the case may be.

(*f*) If the mortgage is subject to a prior charge or charges, add here, "subject to the sd indre of mortgage of the —— day of ——, and the sd sum of £—— and interest thereby secured as aforesd," or, "subject to the sd prior charges and incumbrances to which the same premises are hereinbefore expressed to be subject," or, "subject as aforesd."

(*a*) If the mortgage-money is payable on demand, the words "on demand" will be substituted for the words "on the sd —— day of —— next."

(*b*) If the mortgage is subject to a prior charge or charges, add here "subject as aforesd."

whatsoever by the sd, *mortgagor*, his heirs, exors, admors, or assigns, or any other person or persons whomsoever (*c*):

For further assurance.

AND THAT, &c., [*free from incumbrances, as in No.* I.]: AND FURTHER, that he the sd, *mortgagor*, and his heirs, exors, and admors, and every other person having or claiming any estate, right, or interest, in or to the sd mortgaged hereditaments and premises, or any of them, or any part thereof respectively, will at all times hereafter, at the cost, until foreclosure or sale, of the sd, *mortgagor*, his heirs, exors, or admors, and afterwards of the person or persons requiring the same, execute and do all such assurances and acts whatsoever for further or more effectually assuring the sd freehold premises hereby mortgaged, or any of them, or any part thereof respectively, to the use of the sd, *mortgagee*, his, [*mortgagees*, their] heirs and assigns, in manner (*d*) aforesd, and assuring the sd copyhold or customary premises hereby mortgaged, or any of them, or any part thereof respectively, to the use of the sd, *mortgagee*, his [*mortgagees*, their] heirs and assigns, in manner (*d*) aforesd, according to the custom of the sd manor, and assuring the sd leasehold premises hereby mortgaged, or any of them, or any part thereof, unto the sd, *mortgagee*, his, [*mortgagees*, their] exors, admors, and assigns, for all the residue which shall be then unexpired of the sd term of —— years [except the sd nominal reversion of one day hereby reserved, and also, if thereunto required, the sd reversion] in manner (*d*) aforesd, as by the sd, *mortgagee*, his, [*mortgagees*, their] heirs, exors, admors, or assigns, shall be reasonably required: And also that, &c., [*for payment of rent and performance of covenants of lease, as in No.* III.]

(*c*) If the mortgage is subject to a prior charge or charges, add, "other than and except any person or persons claiming in respect of the sd mortgage," or, "in respect of any of the prior charges and incumbrances aforesd."

(*d*) If the mortgage is subject to a prior charge or charges, add, "and subject as."

VI.

PERSONALTY. VARIATIONS *for* POLICIES *of* ASSURANCE, *and for a Mortgage* SUBJECT *to* PRIOR CHARGES *or* INCUMBRANCES.

AND THE SD, *mortgagor*, doth hereby for himself, his heirs, exors, and admors, covenant with the sd, *mortgagee*, his, [*mortgagees*, their] exors, admors, and assigns, that he, the sd, *mortgagor*, now has full power to assign all the sd [policies and] premises hereby mortgaged unto the sd, *mortgagee*, his, [*mortgagees*, their] exors, admors, and assigns, in manner aforesd, free from incumbrances [save as aforesd.] AND THAT he the sd, *mortgagor*, his exors and admors, and every person having or claiming any estate, right, or interest, in or to the sd mortgaged premises, or any part thereof, will at all times hereafter, at the cost, until foreclosure or sale, of the sd, *mortgagor*, his exors or admors, and afterwards of the person or persons requiring the same, execute and do all such assurances and acts whatsoever for further or more effectually assuring the sd premises, or any of them, or any part thereof, unto the sd, *mortgagee*, his, [*mortgagees*, their] exors, admors, and assigns, and enabling [him or] them to obtain payment, transfer, or delivery, of the same [to recover and receive the monies assured by or to become payable under the sd policy hereinbefore expressed to be hereby assigned, or any substituted policy or policies] [subject as aforesd] as by [him or] them shall be reasonably required.

For right to assign.

For further assurance.

VII.

COVENANT *against* INCUMBRANCES *by one for* FREEHOLDS *or* COPYHOLDS. VARIATIONS *for* LEASEHOLDS *or* PERSONALTY.

AND THE sd, *covenantor*, doth hereby for himself, his heirs,

exors, and admors, covenant with the sd, *mortgagee or transferee*, his, [*mortgagees or transferees*, their] heirs (*e*) and assigns, that the sd, *covenantor*, has not at any time heretofore done or knowingly omitted or suffered, or been party or privy to anything whereby or by means whereof the sd premises hereinbefore expressed to be hereby granted (*f*), or any of them, or any part thereof, are, is, or may be incumbered or affected in any manner whatsoever, or whereby he the sd, *covenantor*, is in anywise prevented from granting (*g*), the same premises, or any of them, or any part thereof, in manner aforesd.

VIII.

COVENANT *against* INCUMBRANCES *by* TWO *or more for* FREEHOLDS *or* COPYHOLDS. VARIATIONS *for* LEASEHOLDS *or* PERSONALTY.

AND EACH of them, the sd, *covenantors*, so far as relates to his own acts and omissions only, doth hereby for himself, his heirs, exors, and admors, covenant with the sd, *mortgagee or transferee*, his [*mortgagees or transferees*, their] heirs (*e*) and assigns, that they, the sd, *covenantors*, *or*, "the sd covenanting parties," respectively have not at any time heretofore done, or knowingly omitted or suffered, or been party or privy to anything whereby or by means whereof the sd premises hereinbefore expressed to be here-

(*e*) For leaseholds or personalty, "exors, admors."

(*f*) "Hereinbefore covenanted to be surrendered," or "hereinbefore expressed to be hereby assigned," as the case may be, or if that expression be appropriate "the sd premises hereby mortgaged."

(*g*) "Surrendering" or "assigning."

by granted (*h*), or any of them, or any part thereof, are, is, or may be incumbered or affected in any manner whatsoever, or whereby they the sd, *covenantors*, *or*, "the sd covenanting parties," respectively are in anywise prevented from granting (*i*) the same premises, or any of them, or any part thereof, in manner aforesd.

PRECEDENTS.

I.

PREC. I.

MEMORANDUM *to accompany the* DEPOSIT *of* DEEDS *by way of* EQUITABLE MORTGAGE *not containing an* AGREEMENT *to* EXECUTE *a* MORTGAGE.

MEMORANDUM that on the —— day of ——, the title deeds relating to a farm at ——, in the county of ——, a list whereof is contained in the schedule hereto, were delivered by me, A., *mortgagor*, of, &c., to B., *mortgagee*, of, &c., in pledge to secure to the sd B., his exors, admors, and assigns, the repayment of £——, this day advanced by the sd B. to me the sd A., with interest thereon at the rate of £—— per cent per annum (*k*).

Schedule.

(*h*) See note (*f*) on previous page.

(*i*) See note (*g*) on previous page.

(*k*) It has been held that an instrument in this form requires no stamp; *Meek* v. *Bayliss*, 31 L. J., N. S., Ch. 448, decided under the repealed Stamp Acts, but equally applicable to the Stamp Act, 1870.

II.

PREC. II.

MEMORANDUM *to accompany* DEPOSIT *of* DEEDS *with* AGREEMENT *to* EXECUTE *a formal* MORTGAGE (*a*).

I, A., *mortgagor*, of, &c., do hereby declare that the title deeds and writings relating to the messuages, farms, lands, and hereditaments situate in the parish of —— and county of ——, known as the —— estate, a short description of which is contained in the first schedule hereto, and a list of which deeds and writings is contained in the second schedule hereto, have been deposited by me with B., *mortgagee*, of, &c., to secure to the sd B., his exors, admors, and assigns, the re-payment of the sum of £—— this day advanced by him to me with interest thereon payable half-yearly at the

Charge.

rate of £—— per cent. per annum until re-payment: And I do hereby charge the sd estate and hereditaments [and all other, if any, the hereditaments belonging to me or over which I have any disposing power to which the sd deeds and writings or any of them relate] with the repayment of

Agreement to execute mortgage.

the sd sum of £—— and interest: And I undertake that I, my heirs, exors, or admors will, when required at my or their own cost, execute and deliver to the sd B., his exors, admors, or assigns, an effectual legal mortgage of the sd estate and premises in such form and with such covenants by me, my heirs, exors, or admors, and such powers of sale and other provisions as the sd B., his exors, admors, or assigns, may require for further securing the payment of

Provision as to stamps.

the sd principal moneys and interest: [And I further undertake to pay all costs and expenses attending the stamping of this agreement (*b*)]: As WITNESS my hand this —— day of ——.

Two Schedules.

(*a*) If it is desired that the mortgagee should have the powers given to mortgagees by the Trustees and Mortgagees Act, 1860, 23 & 24 Vict. c. 145, part ii., the charge must be effected by deed. See Prec. IV., p. 744.

(*b*) The insertion of the words in this bracket, though unnecessary, is not unusual. An agreement by the mortgagor to pay the penalty on stamping after the proper time cannot be enforced. *Abbott* v. *Stratten*, 3 J. & L. 603.

III.

MEMORANDUM *to accompany the* DEPOSIT *of* DEEDS, *and* AGREEMENT *to* EXECUTE *a* MORTGAGE, *to secure an* ACCOUNT CURRENT *with* BANKERS. VARIATIONS *where the Deeds are deposited by a* SURETY. PREC. III.

I, A., *mortgagor*, of, &c., do hereby declare that the title deeds and writings, a list of which is contained in the schedule hereto, relating to the hereditaments situate, &c., known as, &c., have been delivered and deposited by me to and with B., C., and D., of ——, carrying on business as bankers and co-partners, *or*, "the —— Banking Company Limited," for securing to them or to the persons or person for the time being carrying on the sd banking business, their or his respective exors, admors, or assigns, *or*, "to them" the repayment of all such sums of money, [not exceeding £——,] as are now due, or shall from time to time be due to them or him from me, my exors or admors, [from K., of, &c., *the person whose debt is to be secured*, his exors or admors], either on account current, or for money advanced or paid, or in respect of bills, drafts, or notes accepted, paid or discounted, interest, commission, or any other usual or lawful charges, or on any other account whatsoever, together with all costs and expenses which may be incurred in respect of the premises: And I do hereby charge all the sd hereditaments and premises [and all other hereditaments, if any, belonging to me, or over which I have any disposing power to which the sd deeds and writings or any of them relate] with the payment of all moneys due or to become due as aforesd: *Agreement as in Prec.* II., *to execute a mortgage to*, "the sd B., C., and D., or to the persons or person for the time being carrying on the sd banking business, their or his respective exors, admors, and assigns," *or*, "the sd —— Banking Company Limited," *for securing*, "the payment on demand of all such moneys as aforesd, with interest for the same at the rate of £—— per cent. per annum:" And I Charge.

PREC. III.

Power to bankers to grant time to principal debtor and to drawers, &c. of bills.

The security to extend to ultimate balance.

To be limited to specified sum.

do hereby declare that the sd B., C., and D., or other the persons or person aforesd, their or his respective exors, admors, or assigns, *or*, "the sd —— Banking Company Limited," may grant time or other indulgence to or compound with [the sd K., his exors or admors or] any drawers, acceptors, or indorsers of bills or notes without discharging or affecting this security: And I further agree that all dividends, compositions, and payments received from [the sd K., his exors or admors, or] any such drawers, acceptors, or indorsers, shall be taken and applied as payments in gross, and that this security shall extend to any ultimate balance which shall remain due as aforesd: [Provided always, and it is expressly stipulated that this security and the liability of me, my exors and admors hereunder, shall be limited to the sum of £——]. *Provision as to stamping as in Prec.* II.

As witness, &c.

Schedule.

IV.

PREC. IV.

EQUITABLE Charge *by* Deed *upon* Various Properties *real and personal for present and future* Advances *subject to* Prior Incumbrances. *A person having a* Prior Charge *joins to postpone it.* Power *of* Attorney *to Mortgagee.*

Recitals.

Title of mortgagor.

Parties, A., *mortgagor*, 1; B., *prior equitable mortgagee*, 2; C., *mortgagee*, 3: Whas the sd A. is entitled to the hereditaments and property mentioned in the first schedule hereto subject to the incumbrances mentioned in the second schedule hereto: *Agreement for loan*, p. 691, *adding after the word*, "thereof," *the words*, "and also of every other sum or sums which may hereafter be advanced or paid by the sd C., his exors, admors, or assigns to or on account

of the sd A., his exors or admors, with interest at the rate hereinafter mentioned;" AND WHAS the sd B. has, at the request of the sd A., agreed to concur in these presents for the purpose of postponing the charge to which he is entitled under the memorandum of agreement of, &c., mentioned in the second schedule hereto in manner hereinafter appearing: NOW THIS INDRE WITNESSETH that in consideration of the sum of £——, now advanced by the sd C. to the sd A., he the sd A. doth hereby, &c., *covenant for payment of present and future advances*, p. 697, *and interest after default*, p. 697: AND THIS INDRE ALSO WITNESSETH that for the consideration aforesd the sd A. doth hereby subject and charge ALL THE lands, hereditaments, reversion, policy, moneys, and property specified in the first schedule hereto, and all his estate and interest therein (subject to the prior incumbrances mentioned in the second schedule hereto other than the charge of the sd B.), TO AND with the payment on demand to the sd C., his exors, admors, or assigns, of the sum of £——, and interest thereon after the rate aforesd, to be computed from the date of these presents, and of such further sum or sums as shall, at any time or times hereafter during the continuance of this security, be advanced by or become owing to the sd C., his exors or admors, to or from the sd A., his exors or admors, together with interest on such last-mentioned sum or sums after the rate aforesd, to be computed from the time or respective times of the same respectively being advanced: AND THE sd A. doth hereby also for himself, his heirs, exors, and admors, covenant with the sd C., his exors, admors, and assigns, that he the sd A., his heirs, exors, or admors, will at any time or times upon the request of the sd C., his exors, admors, or assigns, but at the cost of the sd A., his heirs, exors, or admors, make and execute to the sd C., his exors, admors, or assigns, a formal and effectual mortgage or mortgages of all or any of the sd hereditaments, property, and premises in such form and with such powers of sale and other powers and provisions

Agreement to postpone.

Witnesseth. Covenant to pay.

Further witnesseth.

Charge.

Covenant to execute mortgage.

PREC. IV.

as the sd C., his exors, admors, or assigns, may require for further securing the moneys intended to be hereby secured as aforesd: AND THE sd B., at the request of the sd A., doth hereby postpone the charge upon the sd hereditaments, property, and premises to which he is entitled under or by virtue of the memorandum of agreement dated, &c., and expressed to be made, &c., mentioned in the sd second schedule hereto, or otherwise howsoever, to the security in favour of the sd C., his exors, admors, and assigns, intended to be hereby effected: AND THE sd A. doth hereby (subject to the rights of the sd prior incumbrancers) irrevocably empower the sd C., his exors, admors, and assigns, or any person whom he or they may from time to time appoint as his or their substitute or agent in that behalf, at any time or times during the continuance of this security in the name or names of the sd A., his heirs, exors, or admors, or otherwise to receive the rents and profits of the hereditaments which may for the time being be subject to this security from the present and future tenants and occupiers thereof, and the persons liable to pay the same respectively, AND to obtain payment and transfer of the trust funds, moneys, and property which may become receivable or transferable in respect of the reversionary interest and policy of assurance specified in the schedule hereto, and any other moneys, funds, or property which may be subject to this security, AND to enforce and use any lawful remedies or means for recovering and obtaining payment or transfer of the sd rents and profits, funds, moneys, and property, or any part thereof as effectually as the sd A., his heirs, exors, or admors could do, AND upon payment or transfer thereof respectively to allow any deduction therefrom in respect of expenses, legacy or succession duty, or on any other account which may be deemed proper or reasonable, AND to give and execute effectual receipts, releases, and discharges for or in relation thereto, which receipts, releases, and discharges, shall exonerate the tenants, occupiers, trustees, office, and other persons paying or transferring the same respec-

Postponement of prior charge.

Power of attorney to mortgagee to receive rents,

get in reversion and policy moneys,

take legal proceedings,

make allowances,

give receipts.

tively from seeing to the application thereof, or being concerned to enquire whether any money is owing on this security or otherwise as to the propriety of the receipt thereof by the sd C., his exors, admors, or assigns, or his or their substitute or agent (*a*).

In witness, &c.

The first Schedule above referred to.

1. Certain lands and hereditaments situate in the parishes of —— and —— in the county of ——, held under a lease bearing date, &c., and made, &c.

2. The reversion of a sum of £——, expectant upon the decease of ——, arising under the will of ——, deceased.

3. Certain freehold lands and hereditaments situate in the parishes of —— and —— in the county of ——, which were conveyed to the sd A. by an indre dated the —— day of ——, and expressed to be made, &c.

4. The life estate and interest of the sd A. in certain messuages, lands, and hereditaments, situate, &c., under a settlement dated, &c., and made, &c.

5. A policy of assurance on the life of the sd A. for the sum of £ ——, effected in the —— office, dated, &c., and numbered, &c.

The second Schedule above referred to.

Incumbrances, giving the dates, names of incumbrancers, and amounts due (*b*).

(*a*) This power of attorney would not be revocable by the mortgagor; *Abbott* v. *Stratten*, 3 J. & L. 603.

(*b*) Notice of this security must be given to the trustees of the reversion and the insurance office. See the "Policies of Assurance Act, 1867," 30 & 31 Vic., c. 144. And notice should also be given to the prior incumbrancers to prevent them from tacking further advances; and to ensure that transferees of any of the prior incumbrances should take with notice, it will be desirable that notice should be endorsed on each of the prior charges. As to the risks incident to a second mortgage, see 2 Davidson, page 838, 3rd. edit. Elphinstone's Introd. Conv., 133, 183.

V.

PREC. V.

EQUITABLE CHARGE *by deed of an* UNDIVIDED SHARE *in* HEREDITAMENTS *for securing* SUMS *of different amount advanced by* THREE SEVERAL PERSONS.

Parties, A., *mortgagor*, 1; B., C., and D., *mortgagees*, 2. *Recite title of mortgagor, Agreement for loan*, p. 691, *form* III.: NOW THIS INDRE WITNESSETH that in consideration of the sd several sums of £——, £——, and £——, by them the sd B., C., and D., respectively now paid to the sd A., the receipt of which three several sums, making the total sum of £——, the sd A. doth hereby acknowledge, He the sd A. doth hereby for himself, his heirs, exors, and admors, covenant with each of them the sd B., C., and D., his exors and admors, that, &c., *covenant for payment*, "to each of them the sd B., C., and D. respectively, his exors, admors, or assigns, the sum so lent by him with interest," &c., p. 696: AND WILL thereafter so long as the sum so lent by him respectively or any part, &c., *continue covenant to pay interest after default*, p. 696, *substituting the word* "covenantee" *for the name of the mortgagee:* AND THIS INDRE ALSO WITNESSETH that in further pursuance of the sd agreement and for the consideration aforesd, the sd A. doth hereby charge ALL THAT one-fourth part or share, and all other the part or share and interest of him the sd A., of and in the sd messuages, tenements, and hereditaments, and the appurtenances thereof, WITH the repayment to each of them the sd B., C., and D., his exors, admors, or assigns, of the sum so lent by him as aforesd, with interest thereon after the rate aforesd pursuant to the covenant hereinbefore contained: AND THE sd A. doth hereby for himself, his heirs, exors, and admors, covenant with each of them the sd B., C., and D., his exors, admors, and assigns, that he the sd A., his heirs, exors, or admors, will at his or their own costs when

Witnesseth.

Covenant to pay.

Further witnesseth.

Charge of share.

With repayment.

Covenant to execute mortgage.

requested so to do by any of them the sd B., C., and D., or the exors, admors, or assigns of any of them, execute such mortgage of the part or share and interest hereby charged of and in the sd hereditaments, with such covenants by the sd A., his heirs, exors, or admors, and such power of sale and other powers and provisions as the person or persons making such request shall reasonably require for the better and further securing the repayment of all the sd moneys and interest: PROVIDED ALWAYS, and it is hereby agreed and declared that the sd three sums of £——, £——, and £——, and the interest thereon, shall be chargeable upon and raiseable and payable out of the sd share and premises hereby charged therewith, equally, and without any preference or priority between themselves. PREC. V. Proviso that loans shall rank equally.

IN WITNESS, &c.

VI.

MEMORANDUM *to accompany* DEPOSIT *of* BONDS *and* SHARE CERTIFICATES *of Companies by way of* EQUITABLE MORTGAGE *to Secure* ANTECEDENT DEBT. PREC. VI.

I, A., *mortgagor*, of, &c., do hereby declare that the bonds and the certificates of the several shares specified in the schedule hereto have been deposited by me with B., *mortgagee*, of, &c., to secure to the sd B., his exors, admors, or assigns, the repayment of the sum of £—— owing by me to him, with interest thereon from the —— day of —— last, payable half-yearly, after the rate of £—— per cent. per annum, and I do hereby charge the sd bonds and shares with the repayment of the sd sum of £—— and interest, and undertake that I, my exors or admors, will whenever required, at my or their own cost, execute and deliver to the sd B., his exors, admors, or assigns, proper transfers of the sd bonds and shares, and if necessary complete the same

PREC. VI.

by registration: And I authorize the sd B., his exors, admors, or assigns, at any time, to sell the sd bonds or shares, or any of them, without any further consent on the part of myself or my exors or admors, and to receive the principal of any of the sd bonds which may be paid off, and the interest or dividends on the sd bonds and shares, with power to give effectual receipts and discharges for any sum or sums of money so received, and to apply such monies after payment and satisfaction thereout of all costs and expenses incurred by him or them in respect of the premises in or towards the discharge of the monies owing on this security, the surplus (if any) of the sd monies being duly accounted for to me the sd A., my exors, admors, or assigns: And I undertake to ratify and confirm every such sale as aforesd, and to execute and do every instrument, act, and thing requisite for effectually vesting any shares or bonds so sold in the purchaser or purchasers thereof: And I further declare that in the meantime and until such respective shares and bonds shall have been effectually transferred by me, my exors or admors, to the sd B., his exors, admors, or assigns, or any purchaser or purchasers from him or them, I, my exors or admors, will be a trustee or trustees of the sd bonds and shares, or of such of them as shall for the time being remain unsold, for the sd B., his exors, admors, or assigns, so long as any money shall remain on the security of these presents, And, after any such sale as aforesd, will be a trustee or trustees of the shares or bonds sold for the purchaser or respective purchasers.

IN WITNESS, &c.

Schedule.

VII.

MORTGAGE *in* FEE *of* FREEHOLDS *by* ONE MORTGAGOR *to* ONE MORTGAGEE. VARIATIONS *where the* MORTGAGOR'S WIFE *joins to release her* DOWER, *and where the* MORTGAGOR *is entitled to* USES *to bar* DOWER (*a*). PREC. VII.

THIS INDRE made the —— day of ——, BETWEEN A., *mortgagor*, of, &c., of the one part, and B., *mortgagee*, of, &c., of the other part. *Recite title of mortgagor to*, "the hereditaments intended to be hereby mortgaged," *as in a conveyance on sale; and agreement for loan*, p. 691: NOW THIS INDRE WITNESSETH that in pursuance of the sd agreement and in consideration of the sum of £—— upon the execution of these presents paid to the sd A. by the sd B., the receipt whereof is hereby acknowledged, *covenant to pay principal*, p. 696; *and interest after default*, p. 696: AND THIS INDRE ALSO WITNESSETH that in further pursuance of the sd agreement, and for the consideration aforesd, the sd A. doth hereby grant unto the sd B., his heirs and assigns, *Parcels*, p. 251; *General words*, p. 264; *All estate clause*, p. 264: TO HAVE AND TO HOLD all the sd hereditaments and premises hereinbefore

(*a*) The variations where the wife releases her dower will be similar to those in a conveyance on sale, see p. 294, with slight alterations in the covenants for title as shown in p. 272, Form III. If the mortgagor is entitled to uses to bar dower, the form of conveyance will be, "the sd A., in exercise of the power limited or given to him by the hereinbefore recited indre, [an indre dated, &c., and expressed to be made, &c.,] and of every other power enabling him in this behalf, doth hereby appoint, and by virtue of his estate and interest and by way of further assurance doth hereby grant and confirm unto the sd B., &c.," and the premises will be described in the habendum and elsewhere if necessary, as "appointed and granted." In other respects the mortgage will in both the above cases be in the usual form. The mortgagor's wife, if a party, must, of course, acknowledge the deed.

PREC. VII. expressed to be hereby granted UNTO the sd B., his heirs and assigns, TO THE USE of the sd B., his heirs and assigns for ever, subject to the proviso for redemption hereinafter contained. *Proviso for redemption*, p. 701; *If buildings form a material part of the security, add covenant to insure and repair*, p. 720; *Power of sale*, p. 704; *Mortgagee's indemnity clause*, p. 729; *If the mortgagor be in possession add attornment clause*, p. 725; *Covenants for title*, p. 730.

IN WITNESS, &c.

VIII.

PREC. VIII. MORTGAGE *in* FEE *of* FREEHOLDS *by* ONE MORTGAGOR *to* ONE MORTGAGEE. SHORT *form without recitals.* VARIATION *where the* POWER *of* SALE *is* OMITTED *in reliance on the* ACT 23 & 24 VICT. c. 145.

Parties, A., (hereinafter called the mortgagor, which expression shall be deemed to include his heirs and assigns, where the context so requires or admits), 1; B., (hereinafter called the mortgagee, which expression shall be deemed to include his exors, admors, and assigns, where the context so requires or admits) (*a*), 2: WITNESSETH that in consideration of the sum of £—— to the mortgagor, now paid by the mortgagee, (the receipt whereof is hereby acknowledged), the mortgagor doth, &c., *covenant to pay principal*, p. 696; *and interest after default*, p. 696: AND THIS INDRE FURTHER WITNESSETH that for

(*a*) If preferred, the interpretation clause may be placed at the end of the deed. See p. 730; and see the note to that form as to the use of the interpretation clause, and especially as to the necessity for retaining the words "*heirs* and assigns" in the case of the *mortgagee* in the conveyance of the estate, and wherever those words are appropriate. Where conciseness is desired, there is no practical objection to omitting the words, "heirs, exors, and admors" at the commencement of the covenant.

the consideration aforesd, the mortgagor doth hereby grant unto the mortgagee, his heirs and assigns, *Parcels*, p. 251; *General words*, p. 264; *All estate clause*, p. 264: TO HOLD the same premises UNTO AND TO THE USE of the mortgagee, his heirs and assigns. *Proviso for redemption*, p. 701, *Covenant to repair and insure if appropriate*, p. 720; *Power of sale*, p. 704 (*b*); *Mortgagee's indemnity clause*, p. 729; *Attornment clause if mortgagor is in possession*, p. 725; *Covenants for title*, p. 732, *form* II. PREC. VIII.

IN WITNESS, &c.

IX.

MORTGAGE *of* COPYHOLDS *by* ONE MORTGAGOR *to* ONE MORTGAGEE *where the* DEED PRECEDES *the* SURRENDER. VARIATIONS *where* RECITALS *are omitted.* PREC. IX.

Parties, A., *mortgagor*, 1; B., *mortgagee*, 2. [*Recite admission of A.*, "to the hereditaments intended to be hereby mortgaged;" *Agreement for the loan*, p. 691: NOW THIS INDRE] WITNESSETH that [in pursuance of the sd agreement and], *consideration, receipt, Covenant by A. to pay principal*, p. 696; *and interest after default*, p. 696;

(*b*) The power of sale and provisions as to insurance may be omitted in reliance on Lord Cranworth's Act, 23 & 24 Vic. c. 145, in which case (see above, p. 704, note (*a*)), it will be advisable to add the clause following: "AND IT IS HEREBY AGREED and declared that the power of sale and other powers conferred on mortgagees by the Statute 23 & 24 Vict. c. 145, and the provisions and trusts ancillary thereto respectively, shall apply to this security, subject only to the following variations, namely, that the sd power of sale shall be exercisable by the mortgagee at any time or times after default shall have been made in payment of some moneys hereby secured and he shall have given a notice in writing, &c., *residue of clause as to events in which power is to be exercised*," p. 706.

PREC. IX. AND THIS INDRE ALSO WITNESSETH that in further pursuance of the sd agreement and for the consideration aforesd, *Covenant by A. to surrender as in a conveyance on sale*, p. 298; *Parcels*, p. 251; [to which sd hereditaments the sd A. was admitted at a court holden, &c., *or*, "out of court" on the —— day of ——]; *General words*, p. 264; *All estate clause*, p. 264: To THE USE of the sd B., his heirs and assigns, according to the custom of the sd manor by and under the rents, fines, suits, and services due and of right accustomed for the same. *Proviso for redemption for copyholds*, p. 702, *form* IV.; *Declaration of trust for B. till surrender*, p. 712; *Covenant to insure and repair if appropriate*, p. 720; *Power of sale*, p. 704; *Mortgagee's indemnity clause*, p. 729; *Attornment clause if mortgagor is in possession*, p. 725; *Covenants for title*, p. 730.

IN WITNESS, &c.

X.

PREC. X. SURRENDER *of* COPYHOLDS *by way of* MORTGAGE.

Manor of ——
County of ——

BE IT REMEMBERED that on the —— day of ——, A., of, &c., a customary tenant of the sd manor came before me, X., [deputy] steward of the sd manor and in consideration of the sum of £——to him the sd A., paid by B., of, &c., the receipt whereof is hereunder acknowledged, did Surrender. out of court surrender into the hands of the lord of the sd manor, by the hands and acceptance of me the sd [deputy] steward by the rod according to the custom of the sd manor, *Parcels*, p. 251; *General words*, p. 264; *All estate clause*, To use of mortgagee. p. 264: To THE USE of the sd B., his heirs and assigns for ever, at the will of the lord according to the custom of the sd manor, subject to the rents, fines, suits, and services due Proviso for and of right accustomed for the same: AND ALSO SUBJECT to

this condition that if the sd A., his heirs, exors, admors, or assigns, shall pay to the sd B., his exors, admors, or assigns, the sum of £—— on the —— day of —— next, together with interest for the same at the rate of £—— per cent. per annum from the date of this surrender without any deduction, then this surrender is to be void and of no effect, otherwise the same is to remain in full force and virtue. PREC. X. redemption.

Signature of A.

Taken the day and year above written by me. } X. [deputy] steward.

[*Receipt for mortgage money.*]

XI.

MORTGAGE *of* COPYHOLDS *by* ONE MORTGAGOR *to* ONE MORTGAGEE *where the* DEED FOLLOWS *the* SURRENDER. PREC. XI.

Parties, A., *mortgagor*, 1; B., *mortgagee*, 2: WHAS for the purpose of securing the repayment of the sum of £—— to the sd A. this day lent by the sd B. with interest, the sd A. did, &c., *recite conditional surrender by A.*, p. 694, *form* X.: AND WHAS upon the treaty for the sd loan it was agreed that the repayment thereof, together with interest on the day and after the rate aforesd, should be further secured in manner hereinafter appearing: NOW THIS INDRE WITNESSETH that in further pursuance of the recited agreement, and for the consideration aforesd, *Covenant by A. to pay principal*, p. 696; *and interest after default*, p. 696; *Covenant to insure and repair, if appropriate*, p. 720; *Power of sale*, p. 704; *Mortgagee's indemnity clause*, p. 729; *Attornment clause if mortgagor is in possession*, p. 725; *Covenants for title by A.*, p. 730, *referring to the property as*, "the sd hereditaments and premises comprised in the hereinbefore recited conditional surrender," *or*, "the sd mortgaged premises." Recitals. Conditional surrender. Agreement. Witnesseth.

IN WITNESS, &c.

XII.

PREC. XII.

MORTGAGE *of* LEASEHOLDS *by* DEMISE (*a*) *by* ONE MORTGAGOR *to* ONE MORTGAGEE. VARIATIONS *for a Mortgage by* ASSIGNMENT *and for* SEVERAL LEASES.

Parties, A., *mortgagor*, 1; B., *mortgagee*, 2. *Recitals of lease or leases setting out the parcels, and devolution (if any) of title to A. as in a conveyance on sale*, p. 235; *Agreement for loan*, p. 691; NOW THIS INDRE WITNESSETH that in pursuance of the recited agreement, *Consideration*, the sd A., &c., *covenant to pay principal*, p. 696; *and interest after default*, p. 696: AND THIS INDRE ALSO WITNESSETH that in pursuance of the sd agreement and for the consideration aforesd, the sd A. doth hereby demise [assign] unto the sd B., his exors, admors, and assigns, *Parcels by reference to lease or leases*, p. 254, *form* XIX.; *General words*, p. 264, *form* IV.; [*If mortgage is by assignment add estate clause*, p. 265, *form* VI.]: TO HAVE AND TO

Wit-nesseth.

Demise.

Habendum.

(*a*) The provisions of the Bankruptcy Act, 1869, 32 & 33 Vic., c. 71, s. 23, enabling a trustee in bankruptcy to disclaim a burdensome lease (under which it has been decided that the disclaimer puts an end to the lease as against a person holding an agreement for an underlease, *Taylor* v. *Gillott*, L. R. 20 Eq. 682, or an equitable mortgagee, *Re Woods*, 3 Ch. D. 459), should be borne in mind in connection with mortgages of leaseholds. This contingency diminishes the security of an equitable mortgagee, even though a considerable margin of value is left by his mortgage, since the equity of redemption may be rendered valueless by subsequent incumbrances, and, therefore, disclaimed. There has been no reported decision as to the effect of a disclaimer upon a legal underlease, and (as the disclaimer is to have the operation of a surrender) it may be that the position of a mortgagee by demise is secure; but it seems desirable, if the covenants of the lease are not too onerous, to take the mortgage by assignment, otherwise it is suggested that it should contain a declaration of trust of the nominal reversion for the mortgagee (see p. 712, form II.), so as to enable him at any time to obtain a vesting order under the Trustee Act (see *Re Collingwood*, 6 W. R. 536, *Steele* v. *Waller*, 28 Beav. 466), which would be effectual as against the mortgagor and all persons claiming under him, except persons acquiring the legal estate without notice, which could scarcely happen if the first mortgagee has the deeds. If this clause is inserted, the declaration usually inserted in the power of sale that the nominal reversion shall be held in trust for the purchaser, will, of course, be omitted.

HOLD all the sd hereditaments and premises hereinbefore expressed to be hereby demised [assigned] UNTO the sd B., his exors, admors, and assigns henceforth for the residue [several residues] now unexpired of the sd term of —— years [several terms of years granted by the sd several indres of lease], *if mortgage is by demise,* "except the last day thereof [last day of each of such respective terms]," SUBJECT to the proviso for redemption hereinafter contained. *Proviso for redemption,* p. 702, *form* II.; *If by demise add declaration of trust of nominal reversion for mortgagee,* p. 712; *Covenant to insure and repair if appropriate* (*b*), p. 720; *Power of sale,* p. 707; *Mortgagee's indemnity clause,* p. 729; *Attornment clause if mortgagor is in possession,* p. 725; *Covenants for title,* p. 733. PREC. XII.

IN WITNESS, &c.

XIII.

MORTGAGE *of* LEASEHOLDS *by* DEMISE. SHORT *form without recitals.* VARIATIONS *for a Mortgage by* ASSIGNMENT. PREC. XIII.

Parties, A., (hereinafter called the mortgagor, which expression shall be deemed to include his exors, admors, and assigns, when the context so requires or admits), 1; B., (hereinafter called the mortgagee, which expression shall be deemed to include his exors, admors, and assigns, when the context so requires or admits (*a*), 2): WITNESSETH that, &c., *consideration, receipt, covenant by mortgagor to pay principal,* p. 696; *and interest after default,* p. 696; Witnesseth.

(*b*) This covenant must of course conform to the provisions (if any) for insurance in the lease. It will usually suffice to covenant to insure, "pursuant to the covenant in that behalf contained in the sd lease."

(*a*) See note, p. 730. The words "exors, admors, and assigns" will be omitted throughout in the case of both mortgagor and mortgagee.

PREC. XIII. AND THIS INDRE ALSO WITNESSETH that for
Demise. the consideration aforesd the mortgagor doth hereby demise [assign] unto the mortgagee, ALL THOSE, &c., *parcels from lease*, which premises were by an indre of lease dated, &c., and made, &c., demised by the sd, *lessor*, unto the mortgagor for the term of —— years at the yearly rent of £——, and subject to the covenants by the lessee and conditions therein contained, with the appurtenances, [*If the mortgage is by assignment, estate clause*, p. 264, *form*
Habendum. V.]; TO HOLD the sd premises hereinbefore expressed to be hereby demised [assigned] unto the mortgagee for the residue of the sd term of —— years, [*if by demise add*, "except the last day thereof,"] subject to the proviso for redemption hereinafter contained. *Proviso for redemption*, p. 702, *form* II.; *if mortgage is by demise add declaration of trust of nominal reversion for mortgagee*, p. 712(*b*); *Power of sale*, p. 711, *form* V. (*c*); *Mortgagee's indemnity clause*, p. 729; *Attornment by mortgagor if in possession*, p. 725; *Covenants for title*, p. 735, *form* IV.

IN WITNESS, &c.

XIV.

PREC. XIV. MORTGAGE *of* FREEHOLDS *to* TRUSTEES (*d*) *or others advancing money on a* JOINT ACCOUNT. PROVISIONS *for reducing the* INTEREST *on* PUNCTUAL PAYMENT, *and for the* CONTINUANCE *of the* LOAN *for a* TERM *of years.* POWER *to* MORTGAGOR *to grant* LEASES.

Parties, A., *mortgagor*, 1; B., C., and D., *mortgagees*, 2. *Recital of seisin of A.*, p. 240; *Agreement for loan*, p. 691, *form*

(*b*) See last Precedent, note (*a*).

(*c*) If thought proper the power of sale may be omitted, and a clause added as in p. 753, note (*b*).

(*d*) As to the importance of taking mortgages to trustees in this form so as to avoid disclosing the trust, see Davidson, Prec. vol. ii. pp. 595, 1321, vol. iii. p. 41, 3rd edition; Elphinstone, Introd. Conv., p. 151.

II.: NOW THIS INDRE WITNESSETH that in pursuance of the sd recited agreement, *consideration*, p. 695, *form* II.; *Covenant to pay principal with interest at the higher rate*, p. 696; *and for payment of interest, at the higher rate, after default*, p. 696: AND THIS INDRE ALSO WITNESSETH that in further pursuance of the sd agreement, and for the consideration aforesd, the sd A. doth hereby grant unto the sd B., C., and D., their heirs and assigns, *Parcels*, p. 251; *General words*, p. 264; *Estate clause*, p. 264; *Habendum, subject to redemption*, p. 700; *Proviso for redemption*, p. 701; *Proviso for reduction of interest on punctual payment*, p. 713; *Proviso for continuance of loan for a term certain*, p. 713; *and if so intended, proviso that mortgagor shall not be at liberty to pay off before the same time*, p. 714; *Declaration that money belongs to mortgagees on joint account*, p. 716; *Covenant to insure and repair if appropriate*, p. 720; *Power of sale*, p. 704; *Mortgagees' indemnity clause*, p. 729; *Power to mortgagor to grant leases*, p. 723; *Attornment clause if mortgagor is in possession*, p. 725; *Covenants for title*, p. 730 (*e*).

PREC. XIV.

Witnesseth.

Grant.

IN WITNESS, &c.

(*e*) The importance of indicating clearly the devolution of the power of sale and other powers given to the mortgagees, leads to the constant recurrence in mortgages to trustees of the form, "the sd B., C., and D., and the survivors and survivor of them, and the exors and admors of such survivor, their or his assigns." This may be avoided by the use of the interpretation clause at p. 730. But if this is not considered desirable, it is suggested that the simple form, "the sd B., C., and D., their exors, admors, and assigns," should be used throughout, instead of the above lengthy form, and the following clause inserted at the end of the deed, "PROVIDED ALWAYS and it is hereby agreed that all the powers and rights hereinbefore given to the sd B. C. and D., their exors, admors, and assigns, shall be exercisable by or devolve upon the survivors and survivor of them, and the exors and admors of such survivor, their or his assigns, or the persons or person for the time being entitled to receive and give an effectual discharge for the moneys hereby secured."

XV.

PREC. XV. MORTGAGE *of* FREEHOLDS *and* COPYHOLDS *to secure present and future* ADVANCES.

Parties, A., *mortgagor*, 1; B., *mortgagee*, 2. *Recitals of title of A. to freeholds*, p. 240; *and of his admission to copyholds*, p. 241: AND WHAS the sd B. has at the request of the sd A. agreed to lend him the sum of £—— upon having the repayment thereof, and also of any other sum or sums of money which may be lent to the sd A., his exors or admors, by, or may become owing from him or them to, the sd B., his exors, admors, or assigns, with interest at the rate hereinafter mentioned, secured in manner hereinafter appearing:

Recitals.

Witnesseth. NOW THIS INDRE WITNESSETH, *consideration*, p. 695, and in consideration of the premises, *covenant by A. to pay present and future advances*, p. 697, *form* IV.; *and interest after default*, p. 697, *form* V.: AND THIS INDRE ALSO WITNESSETH that in pursuance of the sd agreement, and for the consideration aforesd, the sd A. doth hereby grant unto the sd B., his heirs and assigns, *Freehold parcels*, p. 251; *General words*, p. 264; *Estate clause*, p. 264; *Habendum to B. in fee, subject to redemption*, p. 700; *Proviso for redemption*, p. 703, *form* VI.: AND THIS INDRE ALSO WITNESSETH, that in further pursuance of the sd agreement, and for the consideration aforesd, *covenant by A. to surrender copyholds to use of B. subject to rents and services, as in a conveyance on sale*, p. 298; and also subject to a condition for making void the same surrender corresponding with the proviso for redemption hereinbefore contained; *Declaration of trust till surrender*, p. 712; *Covenant to insure and repair, if appropriate*, p. 720; *Power of sale*, p. 704; *Mortgagee's indemnity clause*, p. 729; *Attornment by mortgagor if in possession*, p. 725; *Covenants for title*, p. 730, *the covenant for right to convey running*, "THAT he the sd A. now has full power to grant all such of the sd hereditaments and premises hereby mortgaged as are of

Grant of freeholds.

Covenant to surrender copyholds.

freehold tenure to the use of the sd B., his heirs and assigns, and to surrender all such of the sd hereditaments and premises as are of copyhold tenure to the use of the sd B., his heirs and assigns, according to the custom of the sd manor," *and in the covenant for further assurance referring to the property as* "the sd mortgaged premises." PREC. XV.

IN WITNESS, &c. (*f*)

XVI.

MORTGAGE *in* FEE. A PRIOR MORTGAGEE *joining to* POSTPONE *his* SECURITY. PREC. XVI.

Parties, A., *mortgagor*, 1; B., *prior mortgagee*, 2; C., *mortgagee*, 3. *Recite mortgage by A. to B. setting out the conveyance and proviso for redemption only as in a conveyance on sale*, p. 234; *Agreement for loan from C. to A.*, p. 691: AND WHAS the sd B. has at the request of the sd A. agreed to postpone his aforesd security to the security intended to be hereby effected in manner hereinafter appearing. *First testatum as in Precedent* VII., p. 751, *covenant by A. for payment*, p. 696, *and interest after default*, p. 696: AND THIS INDRE ALSO WITNESSETH that in further pursuance of the sd agreement, and for the consideration aforesd, the sd B. doth hereby at the request of the sd A. grant and release (*g*), and the sd A. doth hereby grant and confirm unto the sd C., his heirs and assigns, *Parcels*, p. 251; *General words*, p. 264; *Estate clause*, p. 264; *Habendum to C. in fee*, p. 266, FREED AND discharged from the sd sum of £——, *the prior mortgage debt*, and all interest due and to grow due for the same

Recitals.

Witnesseth.

Grant.

(*f*) The ad valorem stamp should be sufficient to cover the total sum intended to be lent.

(*g*) If the prior charge were equitable only, it would be sufficient to insert a clause postponing it as in Precedent IV., p. 746, in lieu of the prior mortgagee joining in the conveyance.

PREC. XVI.

and every part thereof respectively, and from all claims and demands under or by virtue of the hereinbefore recited indre of the —— day of ——, BUT subject to the proviso for redemption hereinafter contained; *Proviso for redemption*, p. 701, *the reconveyance to be*, "To the use of the sd B., his heirs and assigns, or as he or they shall direct, subject to such right or equity of redemption as the same premises would if these presents had not been executed have been for the time being subject to by virtue of the hereinbefore recited indre of the —— day of —— on payment of the moneys thereby secured, and with the same powers of sale and other powers and authorities in all respects as would have been subsisting, or might have been exercised if these presents had not been executed"; *Covenant to insure and repair if appropriate*, p. 720; *Power of sale*, p. 704, *the surplus proceeds of sale being payable*, "unto the sd B., as such mortgagee as aforesd, his exors, admors, or assigns, whose receipt shall be a sufficient discharge for the same, or if he or they shall so direct, unto the sd A., his heirs or assigns;" *Mortgagee's indemnity clause*, p. 729; *Attornment clause by mortgagor if in possession*, p. 725; *Covenant by B. against incumbrances*, p. 739; *Covenants by A. for title*, p. 730.

Proviso for redemption.

IN WITNESS, &c.

XVII.

PREC. XVII.

MORTGAGE *in* FEE *by* TWO PERSONS *under a joint* POWER *of* APPOINTMENT, *subject to prior* CHARGES. *The* PRINCIPAL *to be repaid by* INSTALMENTS.

Parties, A. and B., *mortgagors*, 1; C., *mortgagee*, 2:

Recitals.

WHAS by an indre dated, &c., and expressed, &c., the hereditaments hereinafter expressed to be hereby granted, together with other hereditaments, subject to certain annuities or rent-charges of £—— and £——, and the powers and

Settlement.

remedies and terms of years for securing the same therein mentioned, and to an indre of mortgage dated, &c., and expressed, &c., for securing the sum of £—— and interest, *or*, "subject to the charges and incumbrances which are specified in the schedule hereto," were assured and limited to such uses, &c., *setting out fully the joint power of appointment to A. and B.*, and in default of and subject to any such appointment to the use of the sd A. and his assigns during his life, without impeachment of waste, with remainder to the use of the sd B. and his assigns during his life, without impeachment of waste, with divers remainders over; *Agreement for loan to A. and B.*, p. 691, *form* I.: NOW THIS INDRE WITNESSETH, &c., *Consideration*, p. 695; *Joint and several covenant by A. and B. for payment*, p. 696, *form* III.; *and interest after default*, p. 696: AND THIS INDRE ALSO WITNESSETH that in further pursuance of the sd agreement, and for the consideration aforesd, the sd A. and B. do hereby, in exercise of the sd recited power, and of every or any other power in this behalf enabling them, appoint, and by virtue of their respective estates and interests and by way of further assurance do hereby grant and confirm unto the sd C., his heirs and assigns, *Parcels*, p. 251; *General words*, p. 264, *Estate clause*, p. 264; *Habendum to B. in fee subject to redemption*, p. 700, *substituting for the words in note* (*b*), "subject to the sd annuities or rent-charges of £—— and £——, and to the powers and remedies and terms of years for securing the same, and to the sd mortgage of the —— day of ——, and the sum of £—— thereby secured, and the interest now due and henceforth to become due for the same," *or*, "subject to the charges and incumbrances specified in the schedule hereto"; *Proviso for redemption*, p. 701, "if the sd A. and B., or either of them, their or either of their heirs, appointees, exors, admors, or assigns, or any person or persons interested in the equity of redemption of the sd premises hereby mortgaged shall," &c., *and the reconveyance to be*, "at any time when required, and at the cost of the per-

Witnesseth covenant for payment.

Further witnesseth.

Appointment.

Habendum.

Proviso for redemption.

PREC. XVII.

son or persons requiring the same to such uses," &c., *re-limiting the power of appointment verbatim*, "and in default of any and subject to every such appointment, to the uses, upon the trusts, and with and subject to the powers and provisions to, upon, with, and subject to which the sd mortgaged premises stood limited by virtue of the sd indre of, &c., in default of any exercise of the joint power of appointment vested in the sd A. and B. as aforesd, immediately before the execution of these presents, subject to the sd prior charges or incumbrances hereinbefore mentioned or referred to, and to which the mortgage hereby made is hereinbefore expressed to be subject, or such of them as shall be subsisting"; *Proviso for payment by instalments*, "by the sd A. and B., or either of them, their or either of their heirs, appointees, exors, admors, or assigns," p. 715, *with the variation in the note for prior charges; Joint and several covenants by A. and B.*, p. 431, *for insurance and repair if appropriate*, p. 720; *Power of sale*, p. 704, "without any further consent of the sd A. and B., or either of them, their or either of their heirs, appointees, exors, admors, or assigns, or any person or persons interested in the equity of redemption of the sd mortgaged premises," *substituting in the first clause containing the power to sell for the addition in note* (*b*), "and so that every or any sale under the power hereinbefore contained may be made either subject to or discharged from all or any part or parts of the sd prior charges and incumbrances subject to which the sd premises are hereby mortgaged, and in the last-mentioned case upon the terms of the same, or any of them, or any part or parts thereof respectively, being paid off or purchased out of the purchase-money of the hereditaments sold, or of any investments being made [or of any government or other life annuity or annuities being purchased] out of such purchase-moneys, or upon any other terms of indemnity against the sd charges and incumbrances, or any of them, or any part or parts thereof respectively, which the sd C., his exors, admors, or assigns, shall think fit," *in the clause as to the events in which the power may be exercised*,

Payment by instalments.

Power of sale.

say, "notice in writing to the sd A. and B., or one of them, their or one of their heirs, appointees, exors, admors, or assigns, or some other person or persons interested in the equity of redemption of the sd mortgaged premises," *the ultimate trust of the purchase-money will be*, "for the person or persons for the time being entitled to the equity of redemption of the sd mortgaged premises according to his or their respective estates, rights, or interests in the same," *Mortgagee's indemnity clause*, p. 729; *Attornment clause by A. if in possession*, p. 725; *Joint and several covenants by A. and B.*, p. 431, *for title* p. 730, *with the variations for prior charges, in the covenant for quiet enjoyment say*, "without any interruption, &c., by the sd A. and B., or either of them, their, or either of their heirs, appointees, or assigns, or any other person, &c.," *in the covenant for freedom from incumbrances, say*, "by the sd A. and B., or one of them, their, or one of their heirs, &c.," *in the covenant for further assurance, say*, "they the sd A. and B., their, and each of their heirs and appointees, and every other person, &c." PREC. XVII.

In witness, &e. (*a*)

[*The Schedule.*]

XVIII.

SECOND Mortgage *of* Copyholds *and renewable* Leaseholds. A Surety *joining to covenant for* Payment *of principal and interest. Appointment of* Receiver. PREC. XVIII.

Parties, A., *mortgagor*, 1; B., *surety*, 2; C., *mortgagee*, 3; D., *receiver*, 4. *Recite the lease as in a conveyance on sale*, p. 235, *setting out the parcels and the covenant for renewal;*

(*a*) See p. 747, note (*b*).

PREC. XVIII.

the devolution, if any, of title to A., p. 236; *the prior mortgage*, p. 692, *setting out the assignment of the leaseholds subject to redemption, and the covenant to surrender copyholds; the conditional surrender of the copyholds*, p. 694; *agreement for loan*, p. 691; *agreement for surety to join*, p. 692: NOW

Witnesseth.

THIS INDRE WITNESSETH, *consideration*, p. 695; *joint and several covenant by A. and B. for payment*, p. 696; *and for payment of interest after default*, p. 696: AND

Assignment of leaseholds.

THIS INDRE ALSO WITNESSETH that in further pursuance of the sd agreement, and for the consideration aforesd the sd A. doth hereby assign unto the sd C., his exors, admors, and assigns, *leasehold parcels by reference*, p. 254, "together with all such right to the renewal of the sd lease of the —— day of —— as is subsisting by virtue of the covenants and provisions therein contained or otherwise," *short form of general words*, p. 264; *estate clause*, p. 264; *habendum*, p. 701, *subject to the prior mortgage, proviso for redemption*, p. 702, *form* II.: AND

Covenant to surrender copyholds.

THIS INDRE ALSO WITNESSETH that in further pursuance of the sd agreement, and for the consideration aforesd, *covenant by A. to surrender copyholds*, p. 298; *parcels*, p. 251; *general words*, p. 264; *estate clause*, p. 264: To THE USE of the sd C., his heirs and assigns, *condition for making void the surrender*, p. 703, *form* v., "and subject also to the sd conditional surrender of the —— day of —— and the moneys thereby secured;" *declaration of trust of copyholds till surrender*, p. 712, "and subject also to the sd conditional surrender, &c.," *as above; Covenants by A. for renewal, &c.*, p. 722, *in the clause as to assigning the renewed lease to the mortgagee say*, "subject to such equity of redemption as shall then be subsisting by virtue of these presents, and subject to the sd indre of mortgage of the —— day of ——, and the moneys thereby secured, and that until such assignment shall be made the sd A., his exors, admors, and assigns, shall stand possessed of the renewed lease subject to the sd indre of mortgage of the —— day of ——, and the moneys thereby

secured in trust, &c.," *in the power to the mortgagee to obtain a renewal say,* "in his or their own name or names, or in the name or names of the person or persons then entitled to the moneys secured by the sd indre of mortgage of the —— day of —— or otherwise," *To insure and repair if applicable,* p. 720; *Power of sale, p.* 709, *form* IV.; *Mortgagee's indemnity clause,* p. 729; *Proviso as to primary liability between A. and B.,* p. 716, *form* x.; *Proviso that C. shall not be affected by such declaration,* p. 716; *Declaration that B. shall be liable as principal debtor,* p. 717; *Attornment clause by A. if in possession,* p. 725; *Appointment of D. receiver,* p. 726; *Covenants by A. for title,* p. 736, *in the covenant for quiet enjoyment say as to the leasehold premises,* "during the same term, or the term to be granted by any such renewed lease as aforesd." PREC. XVIII.

IN WITNESS, &c.(*b*)

XIX.

MORTGAGE *by* HUSBAND *and* WIFE *of the* FREEHOLDS *of the latter to secure the* HUSBAND'S *Debt.* VARIATIONS *where the* EQUITY *of* REDEMPTION *is limited to the* HUSBAND. PREC. XIX.

Parties, A., and B., his wife, 1; C., *mortgagee,* 2. *Recital of seisin in fee of A. and B. in right of the latter as in a conveyance on sale,* p. 243; *agreement for loan to A.,* p. 691: [AND WHAS the sd A., and B. his wife are desirous and have agreed that the sd hereditaments and the equity of redemption thereof subject to the mortgage intended to be hereby made shall be limited and assured to the use of the sd A., his heirs and assigns, in manner hereinafter expressed, to the intent that the same may become his and their absolute property, freed and for ever discharged from all right, title, Recitals.

(*b*) See p. 747, note (*b*). A receiver is usually appointed by a separate deed, in order that it may be delivered to him if he is called upon to act.

PREC. XIX.

interest, or claim of the sd B., her heirs or assigns (*c*)]: NOW THIS INDRE WITNESSETH that in pursuance of the sd agreement, *Consideration*, p. 696, *form* III.; *covenant by A. for payment*, p. 696; *and interest after default*, p. 696: AND THIS INDRE ALSO WITNESSETH that in further pursuance of the sd agreement, and for the consideration aforesd, the sd B., with the concurrence of the sd A., doth hereby grant, and the sd A. doth hereby grant and confirm unto the sd C., his heirs and assigns, *Parcels*, p. 251; *general words*, p. 264; *estate clause*, p. 264; *Habendum*, p. 700; PROVIDED ALWAYS, and it is hereby agreed that if the sd A., his heirs, exors, admors, or assigns, [*if the equity of redemption is limited to the wife, add*, or the sd B., her heirs, exors, admors, or assigns] shall on the —— day of —— next pay, &c., *continue proviso for redemption*, p. 701, "at the cost of the person or persons requiring the same reconvey the sd premises hereby mortgaged to the use of the sd B., her heirs or assigns, or as she or they shall direct [to the use of the sd A., his heirs or assigns, or as he or they shall direct, to the intent," *&c., as above in the recital*]; *if the equity of redemption is limited to B., add, if thought desirable, a declaration that A., or the mortgaged premises, according to the intention, shall be primarily liable to the payment of the mortgage money*, p. 716, *form* IX., *mutatis mutandis; and proviso that this declaration shall not affect the mortgagee*, p. 716, *form* XI.; *Covenant by A. to insure if appropriate*, p. 720; *Power of sale*, p. 704, *the power being made exercisable*, "without any further consent on the part of the sd A. and B., or either of them, their or either of their heirs or assigns," *and the notice prior to the exercise of the power being required to be given, and the surplus proceeds of sale made payable to*, "the sd B., her heirs or assigns," *if the equity of redemption is limited to her, or*, "to the sd A., his

Grant.

Proviso for redemption.

(*c*) As to the reason for inserting this express recital of the intention, see *Jackson* v. *Innes*, 1 Bligh, 104, *Re Betton*, L. R. 12 Eq. 553, Davidson's Prec. vol. ii., part 2, p. 584, 3rd ed.

heirs or assigns," *if the equity of redemption is limited to him; Mortgagee's indemnity clause*, p. 729; *Attornment by A. if in possession*, p. 725; *Covenants by A. for title*, p. 730, *the covenant for right to convey being*, "that they, the sd A. and B., now have full power to grant, &c.," *and the covenant for quiet enjoyment being*, "without interruption, &c., by the sd A. and B., or either of them, their or either of their heirs, or any other person or persons whomsoever," *and the covenant for further assurance being*, "that the sd A. and B., and their respective heirs, and every person, &c." PREC. XIX.

In witness, &c. (*d*)

XX.

MORTGAGE *of* Freeholds, Copyholds, *and* Leaseholds *held under several leases, by the* Trustees *of a* Will. Proviso *limiting the* Liability *of the* Tenant *for* Life, *who* Covenants *for payment of the mortgage* Money, *as between* Himself *and the* Estate. Powers *of* Leasing *reserved to the* Donee *of the* Powers *of* Leasing *contained in the* Will *by reference to such powers.* PREC. XX.

Parties, A. and B., *trustees*, 1; C., *tenant for life*, 2; D., E., and F., *mortgagees*, 3. *Recite leases*, p. 235; *and devolution (if any) thereof to X.*, p. 236; *will of X., devising his freeholds to uses in strict settlement, under which C. is tenant for life, noticing shortly the powers in the will for granting leases, and setting out a power to the trustees to raise money by mortgage in fee, with or without power of sale, with the consent of the tenant for life, if of full age, for certain purposes, and clause providing that the mortgagee shall not be bound to see whether the money is wanted, or whether more than enough is raised, devise of copyholds and bequest* Recitals.

(*d*) To be acknowledged by B.

PREC. XX.

of leaseholds to A. and B. upon trusts corresponding to the uses of the freeholds, appointment of A. and B., exors; death of X., without having revoked his will and probate, p. 243. *That X. died*, "seised of, or entitled to such of the hereditaments intended to be hereby mortgaged as are of freehold tenure for an estate of inheritance in fee simple, and seised of or entitled to such of the hereditaments intended to be hereby mortgaged as are of copyhold or customary tenure for an estate of inheritance to him and his heirs, according to the customs of the several manors of which the same are respectively holden:" AND WHAS the sd A. and B. have agreed, at the request of the sd C., and in exercise of the sd recited power, to borrow the sum of £——, and the sd D., E., and F., have agreed to advance the same out of moneys belonging to them on a joint account upon having the repayment thereof, with interest at the rate hereinafter mentioned, secured in manner hereinafter appearing: NOW THIS INDRE WITNESSETH, that in consideration of the sum of £——, upon the execution of these presents, paid by the sd D., E., and F., to the sd A. and B., at the request of the sd C., *receipt, covenant by C. to pay principal*, p. 696; *and interest after default*, p. 696: AND THIS INDRE ALSO WITNESSETH, that in further pursuance of the sd agreement, and for the consideration aforesd, the sd A. and B. do hereby, at the request of the sd C., and in exercise of the sd power contained in the sd will of the sd X., and of every other power in this behalf enabling them, appoint (*a*) that, *Freehold parcels*, p. 251; *general words*, p. 264; *special estate clause*, p. 265, *form* VIII., shall henceforth go and remain TO THE USE of the sd D., E., and F., their heirs and assigns for ever, subject to the proviso for redemption hereinafter contained: AND THIS INDRE

Agreement for loan.

Witnesseth.

Further witnesseth.

Appointment of freeholds.

To use of mortgagees.

(*a*) The trustees having no estate in the freeholds, the mortgage is made by appointment; if the legal estate were in the trustees, the mortgage would be in the usual form of a conveyance by grant.

ALSO WITNESSETH, that in further pursuance of the sd agreement, and for the consideration aforesd, the sd A. and B. do hereby, at the request of the sd C., and in exercise of the sd power contained in the sd will, and of every other power, &c., demise (*b*) unto the sd D., E., and F., their exors, admors, and assigns, *Leasehold parcels, by reference to leases*, p. 254; *short general words, without the estate clause*, p. 264; *Habendum*, p. 701; *Proviso for redemption*, p. 702, *form* III., "if the sd A. and B., or other the trustees or trustee for the time being of the sd recited will, or the sd C., his heirs, exors, or admors, or any other person or persons interested in the equity of redemption of the sd premises hereby mortgaged, shall, &c.," *and the reconveyance to be*, "at the cost of the person or persons requiring the same," *the freeholds to be reconveyed*, "to the uses, upon the trusts, and with and subject to the powers and provisions to, upon, with, and subject to which the same stood limited by virtue of the sd recited will immediately before the execution of these presents, or such of them as shall be subsisting," *the leaseholds to be surrendered*, "to the sd A. and B., their exors, admors, or assigns, or other the trustees or trustee for the time being of the sd recited will upon the trusts, and with and subject to the powers and provisions to, upon, with, and subject to which the same were held by virtue of the sd recited will immediately before the execution of these presents, or such of them as shall be subsisting." *Declaration of trust of nominal reversion of each lease*, p. 712: AND THIS INDRE ALSO WITNESSETH, that in further pursuance of the sd agreement, and for the consideration aforesd, the sd A. and B. at the request of the sd C., and in exercise of the power contained in the sd will, and of every other power, &c., do hereby for themselves respectively, and their respective heirs, exors, and admors, covenant with the sd D., E., and F., their heirs and assigns, that they, the sd A. and B., or the survivor of them, or his heirs,

PREC. XX.

Further witnesseth.

Demise.

Proviso for redemption.

Further witnesseth.

Covenant to surrender.

(*b*) As to mortgages of leaseholds by demise, see above, p. 756, note (*a*).

PREC. XX.

and all other necessary parties, if any, *rest of covenant to surrender, subject to redemption, as in Prec.* IX., p. 754; *Declaration of trust of copyholds for mortgagees till surrender,* p. 712; *Declaration that money belongs to mortgagees on a joint account,* p. 716: PROVIDED ALWAYS, and it is hereby agreed, that as between the sd C., his heirs, exors, and admors, and the sd mortgaged hereditaments, the sd hereditaments shall be the primary security for the moneys hereby secured, but this proviso shall not affect the sd D., E., and F., their exors, admors, and assigns, or their right to resort to, and enforce their several securities and remedies for recovering the moneys hereby secured against the sd hereditaments or the sd C., his heirs, exors, and admors personally, in such order or manner as they may think fit. *Covenant by A. and B. to insure, if appropriate,* p. 720: PROVIDED ALWAYS, and it is hereby agreed, that it shall be lawful for the sd C., or other the person or persons who shall from time to time be the donee or donees of the powers of leasing contained in the sd recited will at any time or times hereafter before the sd D., E., and F., their heirs, exors, admors, or assigns, shall have either sold or entered into possession of the whole of the sd premises hereby mortgaged, or have foreclosed the equity of redemption thereof, to exercise over the whole, or any part thereof which shall not have been sold, or entered into possession of, all or any of the sd leasing powers contained in the sd will in the same manner as if these presents had not been executed, and so that every such lease shall be binding on the sd D., E., and F., their heirs, exors, admors, and assigns, *Covenant to deliver the counterparts of the leases to the mortgagees,* p. 723, *form* XX.: AND the sd D., E., and F. do hereby for themselves, their heirs, exors, admors, and assigns, covenant with the sd A. and B., their heirs, exors, admors, and assigns, that they, the sd D., E.,

Proviso as to primary liability of mortgaged premises.

Power of leasing.

Covenant by mortgagees to concur in leases (*c*).

(*c*) As copyholds and leaseholds are not within the Statute of Uses, a lease of them granted by the donee of the power without the concurrence of the mortgagees, would take effect in equity only.

and F., or the survivors or survivor of them, or the heirs, exors, or admors of such survivor, their or his assigns, will, at the request and cost of the donee or donees for the time being of the sd several powers of leasing contained in the sd will, concur in any and every such lease of the sd copyhold or leasehold premises hereby mortgaged, or any part or parts thereof, for the purpose of giving the legal estate in the demised premises to the lessee or lessees. *Power of sale,* p. 709, " without any further consent by any person or persons interested in the premises, or the trustees or trustee for the time being of the sd will," *in the clause for protection of purchasers, say,* "the remedy of the persons or person interested in the premises;" *Mortgagee's indemnity clause,* p. 729; *Covenant by A. and B., that they have not incumbered,* p. 740; *Covenants by C. for title,* p. 736, *the covenant for right to convey commencing,* "And that the sd A. and B. now have full power to appoint." PREC. XX.

In witness, &c.

XXI.

MORTGAGE *of a* Policy *of* Life Assurance *effected by the* Mortgagor *on his own life.* Variations *where the* Policy *is effected in the* Name *of the* Mortgagee, *and for* Several Mortgagees. PREC. XXI.

Parties, A., *mortgagor,* 1; B., [C., and D.,] *mortgagees,* 2. *Recite policy on life of A.,* p. 239; *agreement for loan,* p. 691; [*or, where policy effected in name of mortgagee, recite agreement for loan first*]. *First testatum as in Precedent* VII., p. 751; *covenant by A. for payment,* p. 696; *and interest after default,* p. 696: AND THIS INDRE ALSO WITNESSETH that in further pursuance of the sd agreement and for the consideration aforesd, the sd A. doth hereby assign unto the sd B., his [B., C., and D., their] exors, admors, and assigns, All that the sd policy of Witnesseth. Assignment. Policy.

PREC. XXI.

assurance on the life of the sd A., and all moneys assured by or to become payable under the sd policy, and the full benefit thereof, *estate clause*, p. 264: To HAVE AND TO HOLD the sd policy, moneys, and premises hereinbefore expressed to be hereby assigned UNTO the sd B., his [B., C., and D., their] exors, admors, and assigns, subject to the proviso for redemption hereinafter contained. *Proviso for redemption*, p. 702, *form* II.; [*If the policy is effected in the name of the mortgagee, omit the assignment and insert a proviso for redemption of* "the sd policy of assurance hereinbefore recited to have been effected,"] *Trusts of moneys received under policy*, p. 717; *Receipt clause*, p. 718. *If there are two or more mortgagees insert declaration that money belongs to them on a joint account*, p. 716; *Covenants by A. to keep up policy with subsidiary clauses*, p. 718, *form* XVI., *or* p. 720, *form* XVII.; *Power of sale* p. 708, *form* III., *the policy whether effected in the name of the mortgagor or mortgagee being described as*, "the sd policy hereby mortgaged;" *Mortgagee's indemnity clause*, p. 729; *Covenants by A. for title or, if the policy was effected in the name of the mortgagee, for further assurance only*, p. 739.

Habendum.

To mortgagees.

IN WITNESS, &c. (*d*)

XXII.

PREC. XXII.

MORTGAGE *of a* LIFE INTEREST *in* REAL ESTATE *and* POLICY *of* ASSURANCE *on the life of the* MORTGAGOR *effected in his own name* (*e*). VARIATIONS *for several* MORTGAGEES *and several* POLICIES.

Parties, A., *mortgagor*, 1; B., [C., and D.,] *mortgagees*, 2.

(*d*) Notice of the mortgage must be given to the office, if the policy is effected in the name of the mortgagor. See the Policies of Assurance Act, 1867, 30 & 31 Vic. c. 144, and see p. 421, note.

(*e*) For variations where the policy is effected in the name of the mortgagee, see the last Precedent.

PREC. XXII.

Recitals showing that A. is seised for life without impeachment of waste of, "the —— and hereditaments hereinafter described and intended to be hereby mortgaged;" *and is entitled to a policy or policies on his life,* p. 239; *agreement for loan,* p. 691; *First testatum as in Precedent* VII., p. 751; *covenant by A. for payment,* p. 696; *and interest after default,* p. 696: AND THIS INDRE ALSO WITNESSETH that in further pursuance of the sd agreement and for the consideration aforesd the sd A. doth hereby bargain, sell, (*f*) and demise unto the sd B., his [B., C., and D., their] exors, admors, and assigns, *Parcels,* p. 251; *General words,* p. 264, *omitting estate clause.* TO HAVE AND TO HOLD the sd hereditaments and premises hereinbefore expressed to be hereby demised UNTO the sd B., his [B., C., and D., their] exors, admors, and assigns, for the term of 99 years from the day of the date of these presents, if the sd A. shall so long live, without impeachment of waste, subject to the proviso for redemption hereinafter contained: AND THIS INDRE ALSO WITNESSETH that in further pursuance of the sd agreement and for the consideration aforesd, *assignment by A. of policy or policies subject to redemption as in last Precedent,* p. 773, *if several policies describing them as,* "the sd several policies on the life of him the sd A., and all moneys assured by or to become payable under the same respectively;" *Proviso for redemption,* p. 702, *saying,* "surrender the sd hereditaments and premises hereinbefore expressed to be hereby demised, and reassign the sd policy [respective policies] and premises hereinbefore expressed to be hereby assigned unto the sd A., his exors, admors, or assigns, or as he or they shall direct." *Trusts of moneys to be received under the policy or policies,* p. 717; *Mortgagee's receipts to be*

Witnesseth.

Demise.

Habendum.

To mortgagee.

(*f*) The mortgage is effected by demise instead of a conveyance of the life estate in order not to affect the powers of leasing and consenting to sales, &c., annexed to the mortgagor's life estate (see Dart, V. & P., 5th ed., p. 76), but it appears a proper precaution to add the clause in brackets at the end of the Precedent, in order to preclude the possibility of any question. If the mortgagor's life estate has no powers annexed to it, the mortgage should be by grant of the entire life estate.

PREC. XXII.

discharges, p. 718; *Covenant by A. to keep up policy or policies, &c.*, p. 718, *form* XVI., *or* p. 720, *form* XVII.; *Covenant by A. to insure against fire, if appropriate*, p. 720; *Power of sale*, "of the sd hereditaments, policy [policies], and premises hereby mortgaged or any new policy or policies to be effected pursuant to the aforesd provisions in that behalf, or any of the sd premises," p. 708 (*g*); *Mortgagee's indemnity clause*, p. 729; *Attornment by mortgagor if in possession of hereditaments*, p. 725; [*If the mortgagor's life estate be under a settlement or will containing powers of leasing, sale, or exchange, &c., exercisable by or with the consent of A. add*, PROVIDED ALWAYS, and it is hereby agreed that nothing herein contained shall affect the power of the sd A. to exercise or consent to the exercise of any of the powers contained in the hereinbefore recited indre of settlement, *or*, "will," other than, *here specify any power to be excepted*, but this security shall affect and attach upon the life estate or interest of the sd A. in all property which by means of any sale, exchange, or transposition of investment under any of such powers may from time to time be substituted for the sd hereditaments or any part thereof;] *Covenants by A. for right to demise*, "the sd hereditaments and premises hereinbefore expressed to be hereby demised," *and*

Proviso as to mortgagor's powers under settlement.

(*g*) In the simple case where the life estate is followed by a remainder in fee, and the mortgage is effected by a grant of the entire life estate, it will be convenient to authorise the mortgagee to concur in the sale of the fee; where this is intended add, "and with power to concur with the sd, *reversioner*, his heirs or assigns, in selling the fee simple and inheritance of the said hereditaments or any part thereof," and say, "to rescind or vary or concur in rescinding or varying any contract," &c., and at the end of the clause giving the power to sell and convey, add, "with power on any such sale as aforesd of the sd hereditaments, or any part thereof, to agree with the sd, *reversioner*, his heirs or assigns, for the apportionment of the purchase-money in respect of the life estate hereby mortgaged and the reversion in fee expectant thereon."

to assign, "the sd policy, [policies], and premises hereinbefore expressed to be hereby assigned," *free from incumbrances and for further assurance*, p. 739. PREC. XXII.

In witness, &c. (*a*)

XXIII.

MORTGAGE *of a* Life Interest *in* Personalty *and of* Policies *on the* Life *of the* Mortgagor. PREC. XXIII.

Parties, A., *mortgagor*, 1.; B., *mortgagee*, 2: Whas under or by virtue of an indre dated, &c., and expressed to be made, &c., being a settlement executed in contemplation of the marriage which was shortly afterwards solemnized between the sd A. and M., and of certain transfers and payments made previously or subsequently to the sd indre of settlement, the several moneys, stocks, funds, securities, and property therein mentioned became vested in the trustees of the sd settlement upon trusts for investing and transposing the investment thereof respectively, and subject thereto upon trust to pay the dividends, interest, and annual income of the same premises, and the investments representing the same respectively to the sd A. and his assigns during his life: And whas the trust property now subject to the trusts of the sd settlement consists of the stocks, funds, shares, and securities, the particulars whereof are specified in the first schedule hereunder written, which are now vested in X. and Y., the present trustees of the sd settlement. *Recite title of A. to the policies*, "mentioned in the second schedule hereunder written," p. 239, *form* xxxviii.; *Agreement for loan*, p. 691; *First testatum as in Precedent* VII., p. 751; *covenant by A. for payment of principal*, p. 696; *and interest after default*, p. 696: AND THIS INDRE ALSO WITNESSETH that in further pursuance

Recitals.

Settlement.

Investment of trust funds.

Further witnesseth.

(*a*) Notice to be given to the office or offices. See p. 774, note (*d*).

PREC. XXIII.

Assignment. Life interest.

Policies.

Habendum.

To mortgagee.

Declaration that income shall be paid to mortgagee if required.

of the sd agreement and for the consideration aforesd the sd A. doth hereby assign unto the sd B., his exors, admors, and assigns: First, ALL THE dividends, interest, and annual income which shall arise during the life of the sd A. from the stocks, funds, shares, and securities specified in the first schedule hereto, and every part thereof, and from the investments and property from time to time representing the same or any part thereof; And secondly, ALL THOSE policies of assurance, the particulars whereof are specified in the sd second schedule hereto, and all moneys assured or to become payable by or under such several policies and the full benefit thereof respectively, *All estate clause*, p. 264; TO HAVE AND TO HOLD the sd life interest, policies, moneys, and premises hereinbefore expressed to be hereby assigned unto the sd B., his exors, admors, and assigns, subject to the proviso for redemption hereinafter contained. *Proviso for redemption*, p. 702: AND IT IS HEREBY agreed and declared that the trustees or trustee for the time being of the sd indre of settlement shall from time to time during the continuance of this security if requested so to do by the sd B., his exors, admors, or assigns, pay the sd dividends, interest, and annual income hereby mortgaged or any part thereof to the sd B., his exors, admors, or assigns, and in the meantime shall pay the whole or such part of the sd dividends, interest, and annual income as shall not be payable to the sd B., his exors, admors, or assigns, by virtue of any such request as aforesd to the sd A. or his assigns: AND IT IS HEREBY agreed that if the sd B., his exors, admors, or assigns, shall receive the sd dividends, interest, and annual income or any part thereof, or any moneys in respect of the sd policies or any of them, he or they shall by and out of the same in the first place, *continue trusts of moneys received*, p. 717, *form* XIV.; *Mortgagee's receipts to be discharges*, p. 718, "for any moneys paid to him or them in pursuance of any such request as aforesd or under or by virtue of the sd policies of assurance, or any of them;" *Covenants by A. to keep up life policies, &c.*, p. 718,

form XVI., *or* p. 720, *form* XVII.; *Power of sale*, p. 708, *of*, "the sd life interest, policies, and premises hereby mortgaged, or any of them, or any part or parts thereof, or any such substituted policy as aforesd," *Covenant by A.*, p. 739, *for right to assign*, "the sd premises hereby mortgaged," *free from incumbrances, and for further assurance, the latter part running*, "and also to recover and receive the interest, dividends, and annual income hereby mortgaged, and the moneys to become payable under the sd respective policies hereby mortgaged, or any substituted policy or policies as by him or them shall be reasonably required. PREC. XXIII.

IN WITNESS, &c. (*b*)

The First Schedule to the above-written indre.

Particulars of trust property.

The Second Schedule to the above-written indre.

Name of Office.	Date of Policy.	Amount Assured.	Annual Premium.	Date when Premium is payable.	Number of Policy in the Books of the Office.

XXIV.

CONTRIBUTORY MORTGAGE *of* FREEHOLDS *where the money is advanced in* DISTINCT SUMS *by* DIFFERENT MORTGAGEES. VARIATIONS *where* PART PREC. XXIV.

(*b*) Notice must be given to the trustees of the settlement and to the offices. See p. 774, note (*d*).

PREC. XXIV.

of the money is advanced by TRUSTEES. *Short form* (*c*).

Parties, A., *mortgagor*, 1; B., *one mortgagee*, 2; C., *another mortgagee*, 3; D. [and E.], *other mortgagees*, 4.

Recitals. *Recite title of A. as in a conveyance on sale:* AND WHAS

Loan. the sd B., C., and D. [and E.], have this day advanced to the sd A., the sum of £6000 in the following proportions, namely, the sd B. £1000, the sd C. £2000, and the sd D. [and E., out of moneys belonging to them on a joint account] £3000, upon an agreement that the repayment of the sd aggregate sum of £6000, with interest at the rate hereinafter mentioned, shall be secured to the sd B., C., and D., [and E.,] their exors, admors, and assigns, as joint tenants in manner hereinafter appearing, but that all principal moneys and interest hereby secured [except the sd sum of £3000 and the interest thereon] shall in equity belong to the sd B., C., and D., [B. and C.,] and their respective exors, admors, and assigns, in the shares and proportions aforesd as tenants in common in manner and subject as hereinafter mentioned [and that the sd sum of £3000 and the interest thereon shall in equity belong to the sd D. and E., their exors, admors, and assigns as joint tenants in manner and subject as hereinafter mentioned]: NOW THIS INDRE WITNESSETH that in pursuance of the sd recited agreement,

Witnesseth.

(*c*) This precedent is simpler and shorter than a contributory mortgage in the more usual form, with separate covenants for payment of each sum advanced, and separate powers of sale, &c., to each mortgagee (for a form of which see 2 Dav. Prec., p. 941, 3rd edition); the mortgage in the text being, as between the mortgagor and mortgagees, in all respects on the ordinary footing of a mortgage to joint tenants, although, as between themselves, the mortgagees collectively are trustees of the several sums secured for such of them as are entitled thereto. The disadvantage of this form is that no one of them can call in his money or exercise the powers without the concurrence of the others, and that the form is not adapted to a case in which there are stipulations (such as for reduction of interest on punctual payment) affecting some only of the sums advanced. Another plan is to take the mortgage in the names of trustees nominated on behalf of all the lenders in the usual form not disclosing the trust, with a separate declaration of trust; see the next Precedent.

and in consideration of the sums of £1000, £2000, and £3000, by the sd B., C., and D., [and E.,] respectively paid to the sd A. in the proportions and manner aforesaid the receipt of which sd several sums he the sd A. doth hereby acknowledge, *Covenant by A. for payment of* £6000 *and interest*, p. 696 ; *and interest after default*, p. 696, *to*, " B., C., and D., [and E.,] or the survivors or survivor of them, or the exors or admors of such survivor, their or his assigns " (*d*) : AND THIS INDRE ALSO WITNESSETH that in further pursuance of the sd agreement and for the considerations aforesd, the sd A. doth hereby grant unto the sd B., C., and D., [and E.,] their heirs and assigns, *Parcels*, p. 251 ; *General words*, p. 264 ; *Estate clause*, p. 264 ; *Habendum to B., C., D., [and E.,] subject to redemption*, p. 700 ; *Proviso for redemption*, p. 701, *on payment of* £6000 *and interest to*, " B., C., D., [and E.,] or the survivors or survivor of them, or the exors or admors of such survivor, their or his assigns," *Covenant to insure, if appropriate*, p. 720 ; *Power of sale*, p. 704 ; *Mortgagee's indemnity clause*, p. 729 ; *Attornment clause by mortgagor if in possession*, p. 725 ; *Covenants by A. for title*, p. 730 : PROVIDED ALWAYS, and it is hereby agreed that as between the sd A., on the one part, and the sd B., C., and D., [and E.,] on the other part, the sd aggregate sum of £6000 shall be considered as belonging to the sd B., C.,

Covenant for payment.

Further witnesseth.

Grant.

Proviso that as respects mortgagor, money is to be treated as advanced on joint account.

(*d*) If each contributory is a single person the covenant might take the following form, " The sd A. doth hereby for himself, &c., covenant with each of them the sd B., C., and D., his exors, admors, and assigns as a separate covenant, that he the sd A., &c., will on the —— day of —— next, repay to such respective covenantee, his exors, &c., the sum advanced or contributed by him towards the sd loan of £—— as aforesd, with interest for the same, &c., and will thereafter in case and so long as such sum or any part thereof shall remain unpaid, pay to him or them interest for the same, &c.," the advantage of which would be that each mortgagee would be able to sue for his own debt without the concurrence of the others.

PREC. XXIV.

and D., [and E.,] on a joint account, and accordingly that the sd B., C. and D. [and E.], and the survivors or survivor of them, and the exors or admors of such survivor, their or his assigns, shall be considered as entitled to the sd aggregate debt of £6000 and interest intended to be hereby secured, and their or his receipt shall be an effectual discharge for the same and every part thereof respectively, and that all powers and remedies for recovering payment of the moneys hereby secured shall be exercisable and enforceable by them or him accordingly, without the concurrence of any other person or persons who may be beneficially entitled to any of such moneys; BUT NEVERTHELESS as between themselves, the sd B., C., and D., [and E.,] and the survivors and survivor of them, and the exors or admors of such survivor, shall stand possessed of all principal moneys and interest hereby secured in trust for the sd B., C., and D., [and E.,] their respective exors, admors, and assigns, as tenants in common in the shares hereinbefore mentioned, [excepting that the sd sum of £3000 and interest, shall be considered as belonging to the sd D. and E. on a joint account, and accordingly that the sd D. and E., and the survivor of them, and the exors or admors of such survivor, their or his assigns, shall be entitled to the sd sum of £3000 and the interest thereon, and their or his receipt given to the sd B., C., D., and E., or the survivors or survivor of them, or the exors or admors of such survivor, shall be an effectual discharge for the same]: PROVIDED ALSO, and each of them the sd B., C., and D., [and E.,] doth hereby for himself, his heirs, exors, and admors, covenant with the others and other of them, their and his exors, admors, and assigns, that each of them the sd B., C., and D., [and E.,] his heirs, exors, admors, and assigns, will at any time at the request of the others of them or their respective heirs, exors, admors, or assigns, or any of them, concur in all such acts and proceedings as may be necessary or proper for calling in, recovering, or obtaining payment of the principal moneys or interest hereby secured, or any part thereof, or exercising,

But as between mortgagees on separate accounts.

Covenant between mortgagees to concur in proceedings.

enforcing, or pursuing any powers, remedies, or means for that purpose. PREC. XXIV.

In witness, &c.

XXV.

DECLARATION *of* Trust *of* Money *secured by* Contributory Mortgage *taken in the names of* Trustees *where the money is advanced by the lenders in* Unequal Shares. PREC. XXV.

Parties, A., B., and C., *trustees*, 1; D., *one lender*, 2; E., and F., *other lenders*, 3. *Formal recital of mortgage for* £3000 *to A., B., and C., stating the covenant for payment, the conveyance and proviso for redemption, referring to the parcels as*, "certain —— and hereditaments situate in the parish of —— and county of ——, therein particularly described," p. 692: And whas the sum of £3000 in the hereinbefore recited indre stated to have been advanced by the sd A., B., and C., out of moneys belonging to them on a joint account, was in reality advanced as to £1000 part thereof by the sd D., and as to £2000 the other part thereof by the sd E. and F., out of moneys belonging to them as trustees of an indre of settlement dated, &c.: And whas the sd A., B., and C., have at the request of the sd other parties hereto agreed to execute such declaration of trust as is hereinafter contained: NOW THIS INDRE WITNESSETH that in pursuance of the sd agreement, and in consideration of the premises, it is hereby declared that the sd A., B., and C., and the survivors and survivor of them, and the exors and admors of such survivor, their or his assigns, shall stand possessed of The principal sum of £3000 secured by the hereinbefore recited indre, and the interest thereon In trust as to the sum of £1000, part of the sd principal sum of £3000, and the interest on such sum

Recitals.

Title to money advanced.

Agreement.

Witnesseth.

Declaration of trust.

PREC. XXV.

of £1000, for the sd D., his exors, admors, and assigns, and as to the sum of £2000, other part of the sd principal sum of £3000, and the interest on such sum of £2000, for the sd E. and F., their exors, admors, and assigns, or other the trustees or trustee for the time being of the sd indre of settlement: AND FURTHER that the sd sums of £1000 and £2000, and the interest thereon respectively, shall have no preference or priority the one over the other, but shall be payable rateably and equally out of any moneys which shall be received or realized by the sd. A., B., and C., or the survivors, &c., under or by virtue of the sd indre of mortgage. *Power to appoint new trustees exerciseable by,* "the sd D., his exors, admors, or assigns, jointly with the sd E. and F., or the survivor of them or the exors or admors of such survivor, their or his assigns, or other the trustees or trustee for the time being of the sd indre of settlement," see SETTLEMENTS.

Sums to be secured rateably.

IN WITNESS, &c.

XXVI.

PREC. XXVI.

MORTGAGE *of a* REVERSION *in* FEE *by way of* INDEMNITY *to a person who has become* SURETY *for the mortgagor.* POWER *of* SALE *either of the* REVERSION *or of the* WHOLE ESTATE *with the* CONCURRENCE *of the* TENANT *for* LIFE. VARIATIONS *for a* SHARE *of a* REVERSION.

Recitals. Will.

Parties, A., *mortgagor,* 1; B., *mortgagee,* 2. WHAS under the will of L., dated, &c., and proved on, &c., the sd A. is entitled to [one equal undivided share [and may in certain events become entitled to a further share or shares] of] the reversion in fee simple expectant on the death of K. in the hereditaments hereinafter mentioned, *or recite the will, &c., under which A.'s title arises, at length. Joint and several bond from A. and B. to the —— Banking Company,*

Limited, to secure the balance due from A. on an account current with the Bank, setting out the condition fully, p. 238. AND WHAS the sd B. entered into the sd bond as surety only for the sd A., and upon an agreement that for the purpose of indemnifying the sd B., his heirs, exors, and admors, in respect of his and their liability under the sd bond, the sd A. should enter into the covenants, and execute the security hereinafter contained: NOW THIS INDRE WITNESSETH that in pursuance of the sd agreement and in consideration of the premises, *Covenant by A. for payment on demand*, p. 700, *form* IX., "to the sd B., his heirs (*d*), exors, admors, or assigns, of all and every sum and sums of money which shall be or become recoverable from him or them respectively by virtue of the sd recited bond, and all costs, charges, and expenses which he or they shall incur, or sustain by reason or in consequence of the sd bond or the suretyship effected thereby, or otherwise in respect of the premises, and until payment of such moneys, will pay to him or them respectively interest thereon, &c., p. 696, *form* II.: AND THIS INDRE ALSO WITNESSETH that in further pursuance of the sd agreement, and in consideration of the premises the sd A. doth hereby grant unto the sd B., his heirs and assigns, ALL THAT [undivided —— part or share, *where the mortgagor is contingently entitled to other shares, add*, "and all and singular other the part or share, parts or shares, estate, right, and interest whatsoever of or to which the sd A. now is or may hereafter become entitled in reversion, remainder, or otherwise under or by virtue of the sd will of the sd K.," of and in], *Parcels*, p. 251; *General words*, p. 264; *Estate clause*, p. 264: TO HAVE AND TO HOLD all the sd [part or share [or parts or shares,]] hereditaments, and premises hereinbefore expressed to be hereby granted UNTO the sd B., his heirs and assigns, TO THE USE of the sd B., his heirs and assigns for ever, subject to the life estate therein of the sd K., and subject to the proviso for

Agreement to indemnify surety.

Witnesseth.

Covenant to pay.

Further witnesseth.

Grant.

Parcels.

Habendum.

To mortgagee.

(*d*) As the heirs of the mortgagee are bound in the bond, the indemnity and all powers to the mortgagee should be extended to them.

PREC. XXVI.

redemption hereinafter contained, *Proviso for redemption*, p. 701, *of*, "the sd premises hereinbefore expressed to be hereby granted" *on payment on demand*, "to the sd B., his heirs, exors, admors, or assigns, of all and every sum and sums of money, &c.," *as above*. *Power of sale*, p. 704, *with the following variations, the power to sell is given*, "to the sd B., his heirs, exors, admors, or assigns," *exercisable*, "without any further consent of or notice to the sd A., his heirs or assigns," *substitute in the first clause for the words in note* (*b*), "and to make any such sale as aforesd if thought fit with the concurrence of the sd K. or his assigns, [and the person or persons for the time being entitled to the other part or share, [parts or shares] of the hereditaments hereinbefore described in reversion expectant on the death of the sd K., or any of such persons] in order to effect the sale of the sd hereditaments in possession, [*or*, in order to effect the sale of the entirety or any share or shares of the sd hereditaments and either in possession or reversion], and with power in such case to agree with the person or persons concurring in such sale for the apportionment of the purchase-money in such manner as may be thought proper," *omit the clause as to the events in which the power is to be exercised, and in the proviso for protection of purchasers omit the words referring to the preceding clause, in the power to give receipts and the trusts of the purchase-money say*, "the sd B., his heirs, exors, admors, or assigns;" *Mortgagee's indemnity clause*, p. 729, *saying* "the sd B., his heirs, exors, admors, or assigns;" *Covenants for title*, p. 730, *at the end of the covenant for right to convey add*, "subject to the estate for life of the sd K.," *in the covenant for quiet enjoyment say*, "at any time or times after the death of the sd K., to enter, &c.," *in the covenant for further assurance say*, "to the use of the sd B., his heirs and assigns, subject as aforesd."

IN WITNESS, &c. (*e*).

(*e*) Notice of this mortgage should be given to the tenant for life as the holder of the title deeds, and it would be desirable to endorse a notice of it on one or more of the deeds.

XXVII.

MORTGAGE *by a* HUSBAND *and* WIFE *of the* WIFE'S REVERSIONARY SHARE *of a* FUND *in* COURT, *a* SURETY *joining to covenant for payment of* INTEREST. *The* PRINCIPAL *is made* PAYABLE *on the* REVERSION *falling into* POSSESSION *or the* DEATH *of the* HUSBAND. POWER *to Mortgagee to obtain a* STOP ORDER.

Parties, A. and B., his wife, 1: C., *surety*, 2; D., *mortgagee*, 3. *Recite will of X., bequeathing a legacy of* £—— *in trust for K. for life, remainder for such of her children as should being sons attain twenty-one, or being daughters attain twenty-one or marry, with the usual advancement and maintenance clauses: Death of X. and probate:* AND WHAS the suit of ——, *add reference to record*, was instituted in the year —— in the Court of Chancery for the purpose of having the estate of the sd testator administered and the trusts of his will executed under the direction of the sd court: AND WHAS, in obedience to a direction contained in the order of the sd court made on the —— day of —— on the further consideration of the sd cause, the sd sum of £—— less legacy duty was invested in the purchase of the sum of £—— Bank Annuities, which were transferred to the account of the Paymaster-General for the time being of the sd court to the credit of the sd cause, "the account of the legacy of K. and her children:" AND WHAS the sd B. is one of the six children of the sd K., and has attained the age of twenty-one years, but three of such children are still under that age. *Agreement for loan*, p. 691, *with agreement that C. should join as surety for payment of interest*, p. 692: NOW THIS INDRE WITNESSETH, *&c., consideration*, p. 695; *covenant by A. for payment in six months*, p. 696; *and interest after default*, p. 696: AND THE sd C. doth hereby for himself, his heirs, exors, and admors, covenant with the sd D., his exors, admors, and assigns, that in case default shall at any

Recitals.

Institution of suit.

Sum set apart to answer share.

Family.

Witnesseth.

Covenant by surety to pay interest.

PREC. XXVII.

time be made by the sd A., his heirs, exors, or admors, in payment of the interest on the sd sum of £——, or any part thereof, pursuant to his covenant hereinbefore contained, then and in any and every such case the sd C., his heirs, exors, or admors, will on demand pay to the sd D., his exors, admors, or assigns, the interest which shall be so due and unpaid: AND THIS INDRE FURTHER WITNESSETH that in pursuance of the sd agreement, nd for the consideration aforesd, the sd B., with the concurrence of the sd A., doth hereby assign and the sd A. doth hereby assign and confirm unto the sd D., his exors, admors, and assigns, ALL THAT the part or share or parts or shares to which the sd B. or the sd A. in her right now is or may hereafter by means of the death of any one or more of the other children of the sd K. without attaining a vested interest or by any other means become entitled under the sd will or otherwise howsoever, of and in the sd Bank Annuities, or other the stocks, funds, or securities for the time being constituting or representing the sd legacy of £——, or any part thereof, and of and in all accumulations which may be added thereto, TOGETHER WITH all powers and remedies for recovering and obtaining payment and transfer of the sd share and premises intended to be hereby assigned, *Estate clause*, p. 264: TO HAVE AND TO HOLD the sd part or share and all other the premises hereinbefore expressed to be hereby assigned unto the sd D., his exors, admors, and assigns, subject to the proviso for redemption hereinafter contained, *Proviso for redemption to* B., p. 702, *form* II.; *Trusts of moneys received in respect of reversion*, p. 717, *form* XIV.; *Mortgagee's receipt clause*, p. 718, *form* XV.; *Proviso for continuance of loan for a term certain*, p. 713, *saying*, "shall not before the death of the sd K., or of the sd A., whichever shall first happen, call in, &c."; *Power of sale*, p. 708, *made exercisable*, "without any further consent on the part of the sd A. and B., or either of them, their or either of their exors, admors, or assigns," *and the notice prior to the exercise of the power being required to be given, and the*

Further witnesseth.

Assignment of shares.

Habendum

To mortgagee.

PREC. XXVII.

surplus proceeds of sale made payable to, "the sd B., her exors, admors, or assigns;" *Mortgagee's indemnity clause,* p. 729 : PROVIDED ALWAYS, and it is hereby agreed that as between the sd A., B., and C., respectively, and their respective heirs, exors, and admors, and the sd mortgaged premises, the sd A., his heirs, exors, and admors, shall be primarily liable to the payment of the principal moneys and interest intended to be hereby secured. *Proviso that D. is not to be affected by the last declaration,* p. 716 ; *Declaration that C. shall be liable as a principal debtor for the interest,* p. 717 ; *Covenants by A. that he and B. have right to assign, and for further assurance by them,* p. 739 : AND THE sd A. and B. do hereby empower the sd D., his exors, admors, and assigns, at the cost of the sd A., his exors and admors, to apply for and obtain an order in the sd cause, prohibiting the share and premises hereby mortgaged, or any part or parts thereof, from being paid or transferred out of court without notice to the sd D., his exors, admors, or assigns, and upon such application to use the names of the sd A. and B. as consenting thereto, and to instruct solicitors and counsel accordingly on their respective behalf.

Proviso as to primary liability as between mortgagor and surety.

Power to obtain stop order.

IN WITNESS, &c. (*a*).

XXVIII.

PREC. XXVIII.

MORTGAGE *of a* REVERSIONARY INTEREST *in* SETTLED PERSONALTY *and* POLICY *of assurance on the* DEATH *of the* MORTGAGOR *in the* LIFETIME *of the* TENANT FOR LIFE, *the mortgage* DEBT *being payable on the reversion or policy falling into* POSSESSION. PROVISIONS *for payment of* COMPOUND INTEREST *at the*

(*a*) The deed must be acknowledged by B. under the Act 20 & 21 Vic., c. 57, and a stop order on the funds in court must be obtained by application at Chambers; Morgan, Ch. Acts and Orders, 5th edit., p. 583.

PREC. XXVIII.

OPTION *of the* MORTGAGOR, *and for the* POLICY *being kept up by the* MORTGAGEE. VARIATION *where* INTEREST VARIES *according to* BANK RATE.

Recitals.

Parties, A., *mortgagor*, 1; B., *mortgagee*, 2. *Recite the marriage settlement of the father and mother of A., whereby personalty was vested in trustees upon trust for the father and mother successively for life, with remainder to the children who should attain twenty-one, &c.; The marriage of the father and mother; The death of the mother; That A. is the only child of the marriage who attained twenty-one; The present state of investment of the trust funds:* AND WHAS the sd A. has effected a policy of assurance in the —— Assurance Society dated the —— day of ——, and numbered ——, whereby the sum of £—— is assured to be paid to the exors or admors of the sd A. within —— calendar months after his death in the event of his dying during the lifetime of the sd K., *the father*. *Agreement for loan*, p. 691, *with agreement for payment of compound interest*, p. 692: NOW THIS INDRE WITNESSETH, &c., *consideration, receipt, Covenant by A. with B.*, "that he the sd A., his heirs, exors, or admors, will at the expiration of three calendar months after the death of such one of them the sd A. and K. as shall first die, pay the sd sum of £——, *the principal*, and all sums which the sd B., his exors, admors, or assigns, shall have expended in the meantime in keeping on foot the sd policy hereinbefore mentioned, or in effecting or keeping on foot any substituted policy or policies to be effected as hereinafter is mentioned, together with compound interest at the rate of £—— per cent. per annum [at a rate varying from time to time with and being equal to, *or*, "£1 per cent. above" the rate of discount allowed by the Governor and Company of the Bank of England on approved bills of exchange] on the sd sum of £——, and on the sums so expended as aforesd: THE INTEREST on the sd sum of £—— to commence from the date of these presents, and on the sums of money expended as aforesd from the time of the

Policy.

Witnesseth.

Covenant to pay principal and sums advanced for premiums,

with compound interest.

Clause as to capitalisation of interest.

PREC. XXVIII.

same respectively being expended, and all such interest to be capitalised half-yearly on the —— day of —— and —— day of—— in every year until the time hereinbefore appointed for payment of the aggregate amount due on the security of these presents, and so that on every half-yearly day for making a rest as aforesd, the interest up to that day shall be added to the principal sum owing so as to form one aggregate sum, carrying interest at the rate aforesd: AND FURTHER that in case the aggregate sum hereinbefore covenanted to be paid or any part thereof shall remain unpaid after the time hereinbefore appointed for payment thereof, the sd A., his heirs, exors, or admors, will thereafter pay to the sd B., his exors, admors, or assigns, interest on such aggregate sum, or on so much thereof as shall for the time being remain unpaid at the rate aforesd by equal half-yearly payments, the first of such half-yearly payments to be made at the expiration of six calendar months from the time appointed for payment of the sd aggregate sum as aforesd: PROVIDED ALWAYS that the sd A., his exors or admors, shall be entitled on any half-yearly day for making a rest as aforesd to pay to the sd B., his exors, admors, or assigns, the whole or any part (not being less than £—— at any one time), of the amount then owing in respect of sums expended as aforesd, and of interest (whether capitalized or not) in reduction of the aggregate amount owing as aforesd: AND THIS INDRE ALSO WITNESSETH that in further pursuance of the sd recited agreement and for the consideration aforesd, the sd A. doth hereby assign nnto the sd B., his exors, admors, and assigns, First, ALL THE moneys, stocks, funds, shares, and securities now subject to the trusts declared by the sd recited indre of settlement, or which by means of any change of investment or otherwise may from time to time be substituted for the same respectively or any part thereof; And secondly, ALL THAT the sd policy of assurance effected on the life of the sd A. as hereinbefore mentioned, and all moneys assured by or to become payable under the sd policy and the full benefit thereof, TOGETHER WITH all powers and remedies for recovering

Covenant for payment of interest after default.

Power to pay off sums advanced for premiums and capitalised interest.

Further witnesseth.

Assignment of settled funds.

Policy.

PREC. XXVIII.

Habendum.

To mortgagee.

Proviso that mortgagor need not pay premiums.

That mortgagee may do so.

and obtaining payment and transfer of the sd respective premises, *Estate clause*, p. 264: To HAVE AND TO HOLD the sd premises hereinbefore expressed to be hereby assigned unto the sd B., his exors, admors, and assigns, subject as regards the sd premises first hereinbefore described and expressed to be hereby assigned to the estate and interest of the sd K. during his life therein, and subject as regards all the sd premises to the proviso for redemption hereinafter contained, *Proviso for redemption*, p. 702, *on payment*, "at the expiration of three calendar months after the death of such one of them, the sd A. and K., as shall first die," *of*, "the aggregate amount hereinbefore covenanted to be paid;" *Trusts of moneys, &c., received in respect of reversion or policy*, p. 717; *Receipt clause*, p. 718; *Covenant by A. to keep up policy*, p. 718, *down to the end of the provision that new policies are to be subject to the security, omitting throughout the words*, "at his own cost:" PROVIDED ALWAYS, and it is hereby agreed that it shall not be incumbent on the sd A., unless he shall think fit so to do, to pay any premiums or moneys for keeping on foot the sd original policy, or effecting or keeping on foot any such substituted policy, AND in case he shall at any time neglect or refuse to make the payments aforesd or any of them, it shall be lawful for the sd B., his heirs, exors, admors, or assigns, to pay the same; BUT nevertheless the sd B., his exors, admors, or assigns, shall not, under any circumstances, be responsible for any omission or refusal to keep on foot or renew the sd original or any substituted policy, nor for any losses or expenses which the sd A., his exors, admors, or assigns, may suffer by reason of any such omission or refusal (*a*); *Mortgagee's*

(*a*) As the right to call in the mortgage money does not arise until either the reversion or the policy has fallen into possession, and it is assumed that the amount then receivable will suffice to pay it off without resorting to the other part of the security, a power of sale is not inserted. But if thought proper, a power may be given "at any time after the death of the sd A., in the event of his dying in the lifetime of the sd K., to sell "the sd reversionary interest hereby mortgaged, or any part thereof," p. 708, form III.

indemnity clause, p. 729, *omitting the words*, "the power of sale or"; *Covenants by A. for title*, p. 739.

In witness, &c. (*b*).

XXIX.

PREC. XXIX.

MORTGAGE *of* Wife's Contingent Reversion *belonging to her for her* Separate Use *and a* Policy *on her life effected for her* Separate Use *under the* Married Women's Property Act, 1870 (*c*). Provision *for continuing* Loan *for a* Term.

Parties, A., (*d*), and B., his wife, 1; *C.* 2. *Recite will of X., bequeathing the testator's residuary real and personal estate in trust for conversion and investment of the proceeds, and declaring trusts of such proceeds subject to payment of debts and legacies for K., the testator's widow for life, with remainder for such of his children as should survive her and attain twenty-one or marry, and the issue of such of them as should be then dead per stirpes, with the usual advancement and maintenance clauses, and a declaration that all bequests to married women should be for their separate use; Death of testator and probate:* And whas the funeral and testamentary expenses debts and legacies of the sd testator have

Recitals.

Administration of estate.

(*b*) Notice must be given to the trustees of the reversion, and the office. If the trust property comprises stocks transferable at the Bank of England, a writ of *distringas* may, for the security of the mortgagee against malversation by the trustees, be sued out under 5 Vic., c. 5, s. 5; see Rules of the Supreme Court, 1875, order xlvi., r. 2; or in this case, and when the trust property comprises stock or shares in a Company, a restraining order may be obtained under 5 Vic., c. 5, s. 4; *Re Locke*, 18 W. R. 275, W. N. 1877, p. 38.

(*c*) See the Act, 33 & 34 Vic., c. 93, s. 10.

(*d*) The husband is made a party in order to enter into covenants, the money being, in fact, advanced to him. If he is not a party, the wife should covenant so as to bind her other separate estate, if any, in the following form: "the sd B. doth hereby for herself, her heirs, exors, and admors, to the intent to charge and bind all her separate estate, covenant, &c."

PREC. XXIX.

all been paid, and his residuary real and personal estate so far as the same has been ascertained now consists of, or is represented by the stocks, funds, securities, and property specified in the schedule hereto: AND WHAS the sd K. is still living: AND WHAS there are six children of the sd X. now living, three of whom, including the sd B., have attained the age of twenty-one years, and the remaining three of such children are still under that age, and one child of the sd X. has died leaving issue: AND WHAS under the circumstances aforesd, the sd B. is entitled for her separate use to one-seventh share of the trust premises constituting or representing the residuary estate of the sd X., in reversion expectant on the decease of the sd K., and contingently upon the sd B. outliving the sd K., such share being susceptible of augmentation by the death of any of the other children of the sd X. in the lifetime of the sd K. without issue or by the death of any of such children at any time under the age of twenty-one years; *Agreement for loan to A.*, p. 691: AND WHAS as part of the intended security, the sd B. has effected a policy of assurance in the —— Association on her life, in her own name, and for her separate use dated, &c., and numbered &c., and under the annual premium of £——, whereby the sum of £—— is assured to be paid to her exors, admors, or assigns, in the event of her death in the lifetime of the sd K. *First testatum covenant by A. for payment as in Prec.* VII., p. 750: AND THIS INDRE ALSO WITNESSETH that in further pursuance of the sd agreement and for the consideration aforesd the sd B. doth hereby assign unto the sd C., his exors, admors, and assigns, ALL THAT one equal seventh part or share, or other the share and interest to which she the sd B. is or will upon the decease of the sd K., or otherwise become entitled in the event of her surviving the sd K., of and in the stocks, funds, securities, and property specified in the schedule hereto, or hereafter constituting, arising from, or representing the residuary real and personal estate of the sd X., or any part or parts thereof, and the interest, dividends,

Widow living.

Family.

Title of wife.

Policy.

Further witnesseth.

Assignment of share.

PREC. XXIX.

rents, profits, or income thereof, and accumulations added thereto: And also all that the hereinbefore mentioned policy of assurance on the life of her the sd B., and the sum of £—— thereby assured, and all moneys to become payable thereunder and the full benefit thereof, *Estate clause*, p. 264: Together with all powers and remedies for obtaining and compelling payment and transfer of the sd share and premises first hereinbefore assigned, and the moneys assured by or to become payable under the sd policy; *Habendum to C. subject to redemption*, p. 701; *Proviso for redemption*, p. 702, "on payment by the sd A., his heirs, exors, or admors, or the sd B., her exors, admors, or assigns, or any of them," *the reassignment to be made*, "to the sd B., her exors, admors, and assigns, as her separate estate, or as she or they shall direct;" *Trusts of moneys received in respect of the sd share, policy, and premises*, p. 717, "whether before or after the time hereby appointed for payment of the principal moneys intended to be hereby secured," *the surplus to be paid or transferred* "to the sd B., her exors, admors, or assigns, as her separate estate;" *Receipt clause*, p. 718; *Proviso for continuance of loan for a term certain*, p. 713, "if the sd A., his heirs, exors, or admors, or the sd B., her exors, admors, or assigns, shall on every half-yearly day, &c.;" and, *adding at the end of the clause*, "except so far as the sd principal sum may become satisfied, in the meantime, by the retainer by the sd C., his exors, admors, or assigns, of any moneys received or realised by him or them in respect of the sd share policy or premises as aforesd;" *Proviso that*, "the sd A., his heirs, exors, or admors, or the sd B., her exors, admors, or assigns shall not," *be at liberty to pay off for a term certain*, p. 714; *Covenant by A. with C. to keep up the policy*, p. 718, *with the following variations, that B. shall not do anything to vitiate the policy, and that A., his exors or admors, or B. will renew policy, and that A., his exors or admors, will pay the premiums and deliver the receipts, and that if A., his exors or admors, should neglect*

Policy.

PREC. XXIX.

so to do, power to C. to keep up the policy, and that A., his exors or admors, will repay all moneys expended by C. in keeping up the policy or effecting any new policy, with interest, and mortgaged premises to be charged with the payment. Power of sale, p. 708, "of the said share, policy, and premises hereby mortgaged" *without any further consent* "of the sd B., her exors, admors, or assigns;" *notice to exercise the power to be given to* "the sd B., her exors, admors, or assigns;" *trust of surplus moneys to be for* "B., her exors, admors, or assigns, as her separate estate;" *Covenants by A. that B. has power to assign free from incumbrances and for further assurance by B., &c.*, "at the cost, until foreclosure or sale, of the sd A. and B., their respective exors or admors," p. 739.

IN WITNESS, &c. (*f*).

Schedule.

XXX.

PREC. XXX.

MORTGAGE *of* FREEHOLDS *to a* BUILDING SOCIETY *incorporated under the* BUILDING SOCIETIES ACT, 1874. VARIATIONS *for* LEASEHOLDS *and* COPYHOLDS. *Concise form* (*a*).

(*f*) Notice to be given to the trustees of the will, and the office; and see p. 793, note (*b*).

(*a*) This precedent is adapted to a society originally formed under the Building Societies Act, 1874 (37 & 38 Vic., c. 42), or to one formed under the repealed Act, 6 & 7 Will. IV., c. 32, and which has obtained a Certificate of Incorporation under the Act of 1874 (which is optional, see ss. 7 & 8, and the Amendment Act of 1875, 38 & 39 Vic., c. 9). In the case of a society formed under the repealed Act, and not incorporated under the Act of 1874, the mortgage must be taken in the names of the trustees, for forms of which see Davidson, Prec., 2nd edit., vol. v., p. 2; 3rd edit., vol. ii., pt. 2. In the case of the above precedent, it is assumed that the mortgagees' powers are provided for (as is usual) by the rules. If this is not the case, short powers should be inserted, which may be taken from the next precedent of a mortgage to an Industrial and Provident Society. Mortgages to Building Societies were formerly exempt from stamp duty, but by 31 & 32 Vic., c. 124, s. 11 (re-enacted by 33 & 34 Vic., c. 97, s. 112), the exemption was repealed as to mortgages above £500, and in the case of Societies under the Act of 1874, there is no exemption (see s. 41). As to mortgages of copyholds, see

PREC. XXX.

Parties, A., a member of the —— Building Society, incorporated under the Building Societies Act, 1874, (hereinafter called the mortgagor, which expression shall include also the heirs, [*for leaseholds*, exors, admors,] and assigns of the sd A., if the context so requires or admits), 1; The sd —— Building Society (hereinafter called the Society, which expression shall include also the assigns of the Society, if the context so requires or admits), 2 (*b*): WITNESSETH that in consideration of the sum of £—— upon the execution hereof advanced by the Society to the mortgagor (being the amount to which he is entitled according to the rules of the Society, [and in particular according to the rules under the head ——] in respect of —— shares held by him in the Society), the receipt whereof is hereby acknowledged, the mortgagor hereby (*c*) covenants with the Society that he the mortgagor will pay to the Society, according to the rules thereof, the sum of £—— per [month] during the period of —— years, to be computed from the —— day of ——, the first of such payments to be made on the —— day of ——, and the subsequent payments to be made at regular successive intervals of one [month] during the whole of the sd period without deduction, but so nevertheless that as to any day on which any such payment shall fall due which shall not be a day of meeting of the Society, the sum falling due on that day shall be payable on the first day of meeting next ensuing, AND ALSO will duly and punctually pay as and when the same shall respectively become payable all such fines, fees, or other moneys as may become payable by the mortgagor under the —— rule, or any other rule or rules of the Society in respect

Witnesseth.

Covenant for payment of instalments.

And fines.

ss. 25 & 28 of the Act of 1874, and as to the discharge of mortgages on redemption, see s. 42.

(*b*) For copyholds add, "B., C., and D., trustees appointed by and on behalf of the Society (hereinafter called the trustees, which expression shall include also their heirs and assigns, if the context so requires or admits), 3."

(*c*) The words, "for himself, his heirs, exors, and admors," at the commencement of the covenants, are so unimportant that they may be omitted in the concise forms.

PREC. XXX.

Further witnesseth.

Convey-ance.

Parcels.

All estate.

Haben-dum.

of the shares held by him the mortgagor as aforesd (*d*): AND THIS INDRE FURTHER WITNESSETH, that for the consideration aforesd the mortgagor doth hereby grant, (*e*) [*for leaseholds*, assign, *or*, demise], unto the Society ALL the hereditaments mentioned or described in the schedule hereto, with the actual and reputed appurtenances thereof, AND all the estate and interest of the mortgagor in the same premises, *the estate clause will be omitted in a mortgage of leaseholds by demise. Habendum for freeholds*, p. 701, *form* II.; *for leaseholds*, p. 701, *form* III.,

(*d*) If the mortgage (as in most of the older societies) is to secure, not (as in the text) the repayment of the sum advanced by instalments, but the payment by the advanced member of his subscriptions and other contributions to the funds of the society according to the rules, the mortgagor will covenant for payment of "all the [monthly] subscriptions which, according to the rules for the time being of the Society, shall from time to time become payable by the mortgagor in respect of the sd —— shares [calculated on the —— years' scale, that is to say, the sum of £—— per month on the first Monday in every month for the period of —— years from the —— day of ——], and all fines and other moneys which, according to the sd rules, shall become due on the sd shares, and the observance and performance of all the same rules," instead of as in the text, and corresponding modifications will be made in the other clauses.

(*e*) In a mortgage of copyholds substitute for the conveyance and proviso for redemption the following: "the mortgagor hereby covenants with the Society that he the mortgagor, and all other necessary parties, if any, will forthwith surrender ALL THE hereditaments mentioned or described in the schedule hereto, with the actual and reputed appurtenances thereof, AND all the estate and interest of the mortgagor in the same premises, TO THE USE of the trustees according to the custom of the manor of which the same are holden, subject to a condition for making void such surrender on payment by the mortgagor to the Society, according to the rules thereof, of the sd monthly and other sums of money, fines, and fees, pursuant to the covenant in that behalf hereinbefore contained." Add declaration of trust for the trustees till surrender, p. 712.

in either case say, "the Society," *and for leaseholds, instead of*, "the sd term of —— years granted by the sd indre of lease," *say*, "the term of —— years granted by an indre of lease dated, &c., and expressed, &c.: PROVIDED ALWAYS, and it is hereby agreed that if the mortgagor shall duly and punctually pay to the Society according to the rules thereof the sd monthly and other sums of money, fines, and fees, pursuant to the covenant in that behalf hereinbefore contained, then and in such case, &c., *as in* p. 701, *form* I., *or* p. 702, *form* II. [*In mortgage of leaseholds by demise, add declaration of trust of nominal reversion*, p. 712.] PROVIDED ALWAYS, and it is hereby agreed, that the rules of the Society under the head, *insert the numbers and heads of the rules applicable*, or such of them as are capable of applying to this transaction, shall apply hereto as if herein inserted with the necessary modifications, AND ALSO that the other rules of the Society so far as capable of applying to this transaction, and except so far as the same are hereby varied or departed from or are inconsistent with any of the provisions hereof, shall also (though not expressly referred to) apply to this transaction: PROVIDED ALWAYS, that if the mortgagor shall at any time be in the occupation of the sd mortgaged premises he shall, during such occupation, be deemed to be tenant thereof at the will of the Society (*f*) at a clear [monthly] rent of £——, payable to the Society [monthly] in advance at their registered office, but every payment actually made of such rent shall be accepted by the Society in or towards satisfaction of the moneys for the time being payable by the mortgagor under this security. *Covenants for title*, p. 732 *or* 735, *to be entered into with the Society, or for copyholds with the trustees.*

Proviso for redemption.

Rules of society incorporated.

Attornment clause.

IN WITNESS, &c.

Schedule of Parcels.

(*f*) In the case of copyholds substitute "trustees" for "Society" in this clause.

XXXI.

PREC. XXXI.

MORTGAGE *of* FREEHOLDS *to an* INDUSTRIAL *and* PROVIDENT SOCIETY *by a* MEMBER *to secure the* PURCHASE-MONEY *of a* TENEMENT *by* WEEKLY INSTALMENTS *according to the* RULES. VARIATIONS *for* LEASEHOLDS *and* COPYHOLDS. PROVISIONS *for* INSURANCE *against fire;* POWERS *to the Mortgagees of* ENTRY, *appointing a* RECEIVER, LEASING, *and* SALE. *Concise form* (*a*).

Parties, A., a member of the —— Co-operative Building and Land Society, Limited, having —— paid-up shares therein (hereinafter called the mortgagor, which expression shall include the heirs, [*for leaseholds,* exors, admors,] and assigns of the sd A., if the context so requires or admits), 1; The sd —— Co-operative Building and Land Society, Limited (hereinafter called the Society, which expression shall include the assigns of the Society), 2 (*b*): WITNESSETH that in consideration of the sum of £——, this day paid to the mortgagor by the Society out of its funds, the receipt whereof is hereby acknowledged, the mortgagor hereby covenants with the Society that the mortgagor will repay to the Society the sd sum of £——, with interest at the rate of £—— per cent. per annum, within a term of —— years and —— calendar months to be computed from the ——

Witnesseth.

Covenant to repay by instalments,

(*a*) See 25 & 26 Vic., c. 87; 30 & 31 Vic., c. 117; 34 & 35 Vic., c. 80. The provisions of 25 & 26 Vic., c. 87, s. 15, and 30 & 31 Vic., c. 117, s. 3, extending the exemption from stamp duty in the Friendly Societies Act, 18 & 19 Vic., c. 63, s. 37, to Industrial, &c., Societies do not apply to mortgages; *Re Royal Liver Friendly Society*, L. R. 5 Ex. 78. As to mortgages of copyholds, see 34 & 35 Vic., c. 80, s. 2; and as to the discharge of mortgages on redemption, see s. 3.

(*b*) For copyholds add, "B., C., and D. trustees appointed by and on behalf of the Society (hereinafter called the trustees, which expression shall include their heirs and assigns if the context so requires or admits)," 3.

day of ——, by equal weekly instalments of £——, according to the rules of the sd Society, the first of such instalments to be paid on the —— day of ——, and the last on the —— day of ——, AND WILL also duly and punctually pay to the Society all fines, dues, and moneys which may, at any time during the continuance of this security, become due or payable from the mortgagor to the Society under the rules of the Society or otherwise, AND WILL, during the continuance of this security, observe and perform all the rules of the Society: AND THIS INDRE ALSO WITNESSETH, *conveyance of freeholds or leaseholds as in preceding Precedent* (*c*); AND THIS INDRE FURTHER WITNESSETH that for the consideration aforesd the mortgagor doth hereby assign unto the Society, ALL THOSE —— shares held by the mortgagor in the Society, and all his estate and interest therein, TO HOLD the same unto the Society, subject to the proviso for redemption hereinafter contained: PROVIDED ALWAYS, and it is hereby agreed that the sd premises shall be redeemable on payment by the mortgagor to the Society of the sd sum of £—— and interest by the instalments and in manner aforesd, and of all fines, dues, and moneys which may at any time during the continuance of this security become due or payable from the mortgagor to the Society under the rules thereof or otherwise: AND IT IS HEREBY agreed that in case the mortgagor shall omit or neglect to keep the sd [freehold] premises insured from loss by fire or other casualties to the full value thereof, or to produce to the Society or to any of their officers on demand the policy of such insurance or the receipt for the current year's premium, or shall fail to keep the sd premises in good and tenantable repair and condition, the Society may insure and repair and keep insured and repaired

to pay fines,

and observe rules.

Further witnesseth.

Assignment of shares in the Society.

To the Society.

Proviso for redemption.

Power to Society to insure.

(*c*) The variation for copyholds will be as at p. 798, note (*e*), modified so as to adapt it to the proviso for redemption in the present Precedent, *infra*, which proviso may in that case be omitted, the shares being assigned "subject to the like right of redemption as is hereinbefore provided in the case of the said copyhold premises."

PREC. XXXI.

the same at the expense of the mortgagor, to be repaid to the Society on demand with interest at £—— per cent. per annum, and in the meantime to be a charge upon all the sd mortgaged premises: AND IT IS FURTHER agreed that the Society may at any time hereafter without any further consent on the part of the mortgagor enter into the possession or into the receipt of the rents of the sd [freehold] premises and may appoint at the cost and sole risk of the mortgagor a person to collect and receive such rents for the use and benefit of the Society at such commission as the Society shall think fit: AND ALSO may lease the same premises or any part thereof for the purpose of occupation for any term not exceeding —— years in possession at rack rent, or for building or repairing purposes for any longer term in possession at the best rent which, under the circumstances, can reasonably be obtained without taking a premium: AND ALSO may absolutely sell or dispose of all or any of the sd mortgaged premises at such time, in such manner, and subject to such conditions, as the Society in their discretion may deem expedient, and may buy in or rescind or vary any contract for sale, and resell without being responsible for loss occasioned thereby (*d*): PROVIDED ALWAYS that the Society shall not exercise the power of entering into possession or receipt of rents hereinbefore contained unless and until default shall have been made for —— weekly meetings, or the powers of leasing and sale hereinbefore contained unless and until default shall have been made for —— weekly meetings, of the Society in the payment of some instalment or other moneys which shall have become due on this security or in the observance or performance of some of the rules of the Society or of the covenants herein contained: BUT no

To enter and to appoint a receiver.

To lease.

To sell.

Events in which powers are to be exercised.

Proviso in

(*d*) In the case of copyholds add, "and the trustees shall, if necessary, concur with the Society in the exercise of any of the powers hereinbefore contained, for the purpose of giving legal effect thereto in such manner as the Society may require."

PREC. XXXI.

entry into possession, receipt of rent, lease, or sale, which may be made in the exercise or intended exercise of any of the powers aforesd, shall be impeachable by reason of any breach of the provision lastly hereinbefore contained, or any other impropriety or irregularity, and no purchaser or lessee from or other person dealing with the Society shall be concerned to enquire if any money is owing on this security or into the right of the Society to exercise any of the sd powers : case of improper exercise of powers.

AND IT IS HEREBY further declared that the Society shall, out of the moneys which shall arise from any exercise of the powers hereinbefore contained, in the first place discharge all the expenses incurred in or about the receipt thereof, or the exercise of the sd powers or otherwise in respect of the premises, And in the next place apply such moneys in or towards satisfaction of the moneys owing on this security (and for this purpose in case of a sale under the power hereinbefore contained all the instalments which would at any time afterwards become due under this security, shall be considered as due and owing at the time of such sale), and shall pay the surplus (if any) to the mortgagor as personal estate. *Attornment clause as in last Precedent : Covenants for title*, p. 732, 735, *to be entered into with the Society, or for copyholds with the trustees.* Trusts of moneys received under powers.

IN WITNESS, &c.

Schedule.

XXXII.

PREC. XXXII.

MORTGAGE *of* FREEHOLDS *for a* TERM (*a*) *to* TRUSTEES *under a* POWER *in a* SETTLEMENT *to secure present Loan and future* ADVANCES.

Parties, A., *mortgagor*, 1 ; B., C., and D., *mortgagees*, 2 :

WHAS by an indre bearing date, &c., and expressed, &c., Recitals.

(*a*) Compare Precedent XX. of a mortgage in fee under a power.

PREC. XXXII.

Settlement.

the hereditaments intended to be hereby mortgaged, were assured and limited to the use of the sd A. for his life with divers remainders over, and it was by the sd indre provided that it should be lawful for the sd A. at any time during his life by deed to charge all or any part or parts of the sd hereditaments with the payment of any sum or sums of money not exceeding in the whole £5000, and interest thereon at any rate not exceeding, &c., and to limit or appoint any term or terms of years in the sd hereditaments, or any part or parts thereof, to any person or persons advancing the same for securing the repayment thereof with interest as aforesd, with such power of sale and other provisions as might be thought proper; *Agreement for loan of* £1000, p. 691, *form* II., *adding after the word*, "thereof," *the words*, "and also of every other sum or sums which may hereafter be advanced or paid by the sd B., C., and D., or the survivors or survivor of them, or the exors or admors of such survivor, their or his assigns, to or on account of the sd A., his exors or admors, not exceeding together with the sd sum of £1000 the sum of £5000" (*b*):

Witnesseth.

NOW THIS INDRE WITNESSETH that in pursuance of the sd agreement, *Consideration*, p. 695, *form* II., *covenant by A. for payment of principal sum and future advances*, p. 697, *form* IV., *and interest after default*, p. 697, *form* V.:

Covenant for payment.

Further witnesseth.

AND THIS INDRE ALSO WITNESSETH that in pursuance of the sd agreement and for the consideration aforesd the sd A. in exercise of the power or authority for this purpose given to him by the hereinbefore recited indre, and of every or any other power in this behalf him enabling, doth hereby charge, *Parcels*, p. 251; *General words*, p. 264: WITH the payment to the sd B., C., and D., and the survivors and survivor of them, and the exors and admors of such survivor, their or his assigns, of the sd sum of £1000, and every

Charge of parcels with payment.

(*b*) This limit of amount is mentioned as the power in the settlement requires it, otherwise it would not have been necessary, the security being good for any amount which the stamp is sufficient to cover. See the Stamp Act, 1870, 33 & 34 Vic., c. 97, s. 107.

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other sum which may be advanced or paid as aforesd, and the interest for the same respectively at the rate aforesd on or at the respective days or times hereinbefore appointed for payment thereof respectively: AND THIS INDRE ALSO WITNESSETH that in further pursuance of the sd agreement, and for the consideration aforesd, the sd A., in exercise of the power or authority for this purpose given to him by the hereinbefore recited indre, and of every or any other power in this behalf him enabling, doth hereby limit and appoint, ALL THE —— and hereditaments and all other the premises hereinbefore expressed to be hereby charged, TO THE USE of the sd B., C., and D., their exors, admors, and assigns, for the term of 500 years from the day next before the date of these presents, subject to the proviso for redemption hereinafter contained; *Proviso for redemption*, p. 701, *on payment by*, "the sd A., his heirs, exors, admors, or assigns, or any person or persons interested in the equity of redemption of the sd premises hereby mortgaged," *saying*, "then and in such case the sd term of 500 years hereby created shall forthwith cease and determine;" *Declaration that money belongs to mortgagees on joint account*, p. 716; *Covenant to insure and repair if appropriate*, p. 720; *Add power of sale*, p. 704, *if authorised by the power in the settlement, exerciseable*, "without any further consent on the part of the sd A., his heirs or assigns, or any other person interested under the sd settlement," *the second clause as to the concurrence of the heir of the mortgagor being omitted, and the surplus sale moneys being made payable to*, "the person or persons for the time being entitled to the equity of redemption of the sd mortgaged premises according to his or their rights and interests;" *Mortgagee's indemnity clause*, p. 729; *Attornment by A. if in possession*, p. 725: PROVIDED ALWAYS, and it is hereby agreed and declared, that as between the sd A., his heirs, exors, and admors, and the sd mortgaged premises, the sd mortgaged premises shall be primarily liable to the payment of the moneys intended to be hereby secured; *Proviso that mortgagees are not to be*

Further witnesseth.

Appointment.

To use of mortgagees for term.

Proviso for redemption.

Power of sale.

Proviso as to primary liability to debt.

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affected by foregoing declaration, p. 716, *form* XI.; *Covenants by A.*, "that the sd A. now has full power to charge and also to limit and appoint the sd hereditaments and premises hereby mortgaged in manner and for the term aforesd," *for quiet enjoyment, free from incumbrances, and for further assurance, as in mortgage of leaseholds*, p. 734, *mutatis mutandis*.

IN WITNESS, &c.

XXXIII.

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MORTGAGE *of an* UNDIVIDED MOIETY *of* FREEHOLDS *to secure the re-transfer of* STOCK, *and for payment in the meantime of* SUMS *equal to the* DIVIDENDS. POWER *of* PARTITION. VARIATIONS *where* INTEREST *on the* SUM *which would be produced by* SALE *of the* STOCK *is payable till* RETRANSFER, *and for a* MORTGAGE *to* TRUSTEES (*a*).

Recitals. Seisin of mortgagor.

Parties, A., *mortgagor*, 1; B., [C., and D.,] *mortgagee*[*s*], 2: WHAS under and by virtue of an indre dated, &c., and of another indre dated, &c., and duly enrolled as a disentailing assurance, the sd A. is seised of the one undivided moiety hereinafter mortgaged of the hereditaments hereinafter described and the inheritance thereof for an estate in fee simple in possession: AND WHAS it has been agreed between the parties hereto that the sd B., [C., and D.,] should sell the sum of £—— £3 per cent. Consolidated Bank Annuities, to which he is absolutely entitled, [they are absolutely entitled on a joint account,] and pay the produce thereof to the sd A., upon the terms of having the repurchase in his name

Agreement.

(*a*) As to the propriety of trustees investing on a stock mortgage, see Dav. Prec., vol. ii., p. 1168, note, 3rd ed., *Whitney* v. *Smith*, L. R. 4 Ch. Ap. 513, where such a mortgage was held to be an improper investment under the ordinary powers of varying securities.

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[their names] of the sd sum of £—— stock, together with the payment in the meantime of sums of money equal to the dividends thereon [of interest in the meantime on such produce at the rate hereinafter mentioned], secured in manner hereinafter appearing: NOW THIS INDRE WITNESSETH, that in consideration of the sd B., [C., and D.,] having sold the sd sum of £—— stock, and having this day paid the sum of £—— sterling, the net sum produced by such sale, unto the sd A., *receipt, covenant by A. to re-transfer stock, and in the meantime to pay sums equal to the dividends,* [*or to pay interest on the sum of* £——], p. 698; *and to pay sums equal to dividends,* [*or interest*] *after default,* p. 698; *Second testatum as in Prec.* VII., p. 750, *grant of* "ALL THAT one undivided moiety of and in," *Parcels,* p. 251; *General words,* p. 264; *Estate clause,* p. 264; *Habendum,* p. 700 (*b*); *Proviso for redemption,* p. 703, *form* VII.; [*Declaration,* p. 716, *by B., C., and D., that,* "the sd sum of £—— stock so sold by them as aforesd was stock belonging to them on a joint account," *and that they and the survivors shall remain entitled to,* "the sd sum of £—— stock, and sums of money equivalent to the dividends thereof intended to be hereby secured," *or,* "the sd sum of £—— stock and interest intended to be hereby secured,"] *Covenant to insure and repair, if appropriate,* p. 720; *Power of sale and partition,* p. 704, *altered as follows, in the first clause giving power to sell and convey, say,* "to sell the sd moiety hereby mortgaged of the sd hereditaments and premises hereinbefore described, or any part or parts thereof, or to concur with the owner or owners for the time being of the other moiety thereof in selling the entirety thereof," *for the words in note* (*b*) *substitute,* "and also to concur with such owner or owners in making a partition of the sd hereditaments or any part or parts thereof, and to give or receive money for equality of par-

Witnesseth.

Covenant to re-transfer stock and pay interest.

Further witnesseth.

Grant.

Declaration that stock belongs to mortgagees on joint account.

Power of sale and partition.

(*b*) In this and the subsequent clauses, insert the word "moiety" before "hereditaments."

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tition, and to make any such partition upon such terms and conditions as he or they [they or he] shall think fit," *add at the end of the first clause*, " and in the event of any such partition the hereditaments allotted in severalty in lieu of the undivided moiety hereby mortgaged shall become subject in all respects to this security, and to the power of sale hereinbefore contained," *in the next clause as to the concurrence of the heir say*, " upon any sale or partition under the powers hereinbefore contained," " of effectuating such sale or partition," *in the clause as to the events in which power is to be exercised say*, " shall not exercise the powers of sale and partition hereinbefore contained unless and until default shall have been made in making the transfer of the sd sum of stock, the transfer whereof is intended to be hereby secured, or some part thereof, and he or they [they or he] shall have given a notice in writing to the sd A., his heirs, exors, admors, or assigns, to transfer such stock and to pay the moneys for the time being owing on this security, or left a notice, &c., and default shall have been made in transfer of such stock or some part thereof or in payment of such moneys or some part thereof for six calendar months from the time of giving or leaving such notice, or unless or until the whole or part of some moneys the payment whereof is intended to be hereby secured as an equivalent for the dividends on the sd stock, [*or*, the whole or part of some half-yearly payment of interest, the payment whereof is intended to be hereby secured] shall be in arrear for three calendar months, *in the proviso for protection of purchasers say*, " sale or partition," " the purchaser or purchasers or owner or owners for the time being of the other moiety of the sd hereditaments and premises," " or whether any default has been made in transfer of any stock, or in payment of any moneys intended to be hereby secured, or whether any stock or moneys remain owing on this security," *in the receipt clause say*, " sale or partition," " purchase-money or money received for equality of partition," " purchaser or purchasers

or owner or owners for the time being of the sd other moiety," *in the trusts of purchase-money say,* "the moneys to arise from any such sale or to be received for equality on any such partition as aforesd," "incurred in or about such sale or partition," "stock and moneys for the time being owing on this security," "surplus of the moneys to arise or be received as aforesd," *in the declaration at the end of the power of sale say,* "power of sale or partition," "stock and moneys owing;" *Covenant by mortgagor for repayment on demand,* p. 700, *of,* "every sum of money which may be paid by the sd B., his [B., C., and D., their] exors, admors, or assigns, for equality of partition on any partition made under the power hereinbefore contained with interest," *add,* "and that until payment thereof every such principal sum and interest shall be charged on the hereditaments for the time being subject to this security." *Mortgagee's indemnity clause,* p. 729; *Power to A. to grant leases for twenty-one years,* p. 723, "PROVIDED ALWAYS, and it is hereby agreed and declared, that the power of leasing hereinbefore contained may be exercised either as to the sd moiety hereby mortgaged alone or in conjunction with the owner or owners for the time being of the other moiety of the sd hereditaments," *covenant by A. to deliver counterpart of lease,* "in case the same shall be in his custody or power;" *Covenants for title,* p. 730, *in the covenant for quiet enjoyment say,* "if default shall be made in the transfer of the sd sum of £—— stock, or in payment of any moneys intended to be hereby secured."

Covenant to repay on demand sums advanced for equality of partition.

Proviso extending power of leasing.

IN WITNESS, &c.

XXXIV.

BILL *of* SALE *of* FURNITURE, &c. VARIATIONS *for* FARMING STOCK *and where the* SECURITY *is given under* PRESSURE *for an* ANTECEDENT DEBT (*a*).

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Parties, A. *mortgagor*, 1; B. *mortgagee*, 2: WITNESSETH that, *consideration*, p. 695 [*or*, WHAS the sd A. is indebted

Recitals.

(*a*) The following points should be attended to in connection with Bills of Sale by way of Mortgage. *First*, a bill of sale of chattels which remain in the possession of the assignor is void against creditors as being fraudulent within the meaning of 13 Eliz. c. 5, s. 2, unless such possession is consistent with the deed, which will usually be the case if the assignment is by way of mortgage only: *Martindale* v. *Booth*, 3 B. & Ad. 498; *Alton* v. *Harrison*, L. R. 4 Ch. 622; *Steward* v. *Lombe*, 1 Brod. & Bing. 506. *Secondly*, under the Bankruptcy Act, 1869. 32 & 33 Vic., c. 71, s. 15, the property divisible among the creditors of a bankrupt *trader* comprises all goods and chattels (including trade debts, but not other choses in action) being at the commencement of the bankruptcy (which by section 11 relates back to the act of bankruptcy on which the order of adjudication takes place, subject to the provisions of s. 95 protecting dealings in good faith and for valuable consideration during that interval), in the possession, order, or disposition of the bankrupt by the consent and permission of the true owner, of which goods and chattels the bankrupt is the reputed owner. The effect of this enactment is that goods (other than fixtures) comprised in a mortgage, if retained by the mortgagor, remain in his order and disposition, and therefore if he is a trader will, on his bankruptcy, pass to the trustee, unless the mortgagee takes or does his best to obtain possession of them before the commencement of the bankruptcy; and the result is not altered by a provision in the bill of sale authorising the mortgagor to remain in possession till default: *Freshney* v. *Carrick*, 1 H. & N. 653; *Spackman* v. *Miller*, 12 C. B. N. S. 659; *Ex parte Harding*, L. R. 15 Eq. 223; *re Wright*, 3 Ch. D. 70. The enactment in s. 15 applies to liquidations by arrangement, s. 125, clause (5). *Thirdly*, a mortgage of all a man's property or of all with a colourable exception, whether he be in trade or not, is an act of bankruptcy, as being fraudulent within the 6th section of the Bankruptcy Act, 1869, if made to secure a past debt, *Re Wood*, L. R. 7 Ch. 302, unless the mortgage be made in pursuance of an agreement made at the time of the advance: *Harris* v. *Rickett*, 4 H. & N. 1; *Ex parte Izard*, L. R. 9 Ch. 271. But an assignment by way of mortgage of all a man's property for a present advance, (*Pennell* v. *Reynolds*, 11 C. B. N. S. 709; *Re Colmere*, L. R. 1 Ch. 128); or for a past debt and a substantial present advance (*Mercer* v. *Peterson*, L. R. 2 Ex. 304; 3 Ex. 105; *Allen* v. *Bonnett*, L. R. 5 Ch. 577; *Ex parte Reed*, L. R. 14 Eq. 586; *Ex parte King*, 2 Ch. D. 256; *Ex parte Ellis*, 2 Ch. D. 797), provided the advance be made *bonâ fide* for his benefit (*Ex parte Greener*, W. N. 1877, p. 74), or for a past debt and future advances agreed to be made, and afterwards in fact made (*Ex parte Winder*, *re Winstanley*, 1 Ch. D. 290, 560) is not within

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to the sd B. in the sum of £——: And whas the sd B. has commenced an action in the —— Division of the High Court of Justice against the sd A. for the recovery of the sd sum of £——: And whas it has been agreed between the sd A. and B. that the sd B. should stay all proceedings in the sd action upon having the repayment

this enactment. A bill of sale which would be invalid under the 6th section in case of bankruptcy is equally so in case of liquidation by arrangement: *Ex parte Eyles*, L. R. 16 Eq. 99. *Fourthly*, a voluntary conveyance made in contemplation of bankruptcy in favour of a creditor by a person becoming bankrupt within three months afterwards is void against the trustee in bankruptcy, as being a fraudulent preference within the 92nd section of the Bankruptcy Act, 1869; but if the security be given under pressure, or in pursuance of an antecedent agreement, it will not be invalidated by that section: *Ex parte Craven*, L. R. 10 Eq. 648, L. R. 6 Ch. 70; *Smith* v. *Pilgrim*, 2 Ch. D. 127; and see *Ex parte London and County Bank*, L. R. 16 Eq. 391; *Ex parte Hodgkin*, L. R. 20 Eq. 746. *Fifthly*, unless the bill of sale is registered under the Bills of Sale Act, 17 & 18 Vic., c. 36, within twenty-one days after the making or giving thereof, it will be void against the trustee in bankruptcy, or under an assignment for the benefit of creditors, or an execution creditor, so far as regards the chattels comprised therein, which at or after the time of the bankruptcy or assignment or the execution of the process and after the period of twenty-one days shall be in the possession or apparent possession of the mortgagor; and that, even if the mortgagee has ineffectually endeavoured to take possession of the goods, *Ancona* v. *Rogers*, 1 Ex. D. 285. It should be remembered that registration under the Act does not displace the effect of the reputed ownership clause in the Bankruptcy Act, so that if the mortgagor is in trade, the bill of sale will be void notwithstanding registration as against his trustee in bankruptcy or under a liquidation by arrangement, if he retains possession. *Sixthly*, although fixtures, whether the owner be the freeholder or only a lessee, are not within the reputed ownership clause of the Bankruptcy Act (*Mather* v. *Fraser*, 2 K. & J. 536; *Ex parte Barclay*, 5 D. G. M. & G. 403; *Walmsley* v. *Milne*, 7 C. B. N. S. 115), even if mortgaged separately from the land to which they are annexed (*Whitmore* v. *Empson*, 23 Beav. 313); yet a mortgage of fixtures apart from the land requires registration under the Bills of Sale Act; and if the fixtures are mortgaged with the land (whether freehold or leasehold) registration is necessary if the mortgagee has power to sell or take possession of the fixtures separately from the land: *Hawtry* v. *Butlin*, L. R. 8 Q. B. 290; *Ex parte Daglish*, L. R. 8 Ch. 1072; *Ex parte Barclay*, L.R. 9 Ch. 576; *Re Eslick*, 4 Ch. D. 503. A mortgage of growing crops does not require registration, *Brantom* v. *Griffits*, 1 C. P. D. 349 (affirmed on appeal 2nd February, 1877). *Seventhly*, where a bill of sale by way of mortgage is not registered, and a fresh bill of sale is afterwards given within the twenty-one days, the last bill of sale, if registered within twenty-one days, will, however often the

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of the sd sum of £—— together with his costs of the sd proceedings (amounting to £——) with interest at the rate hereinafter mentioned, secured in manner hereinafter appearing. NOW THIS INDRE WITNESSETH that in pursuance of the sd agreement and in consideration of the sd sum of £—— so owing by the sd A. to the sd B. as aforesd and of the premises,] *Covenant by A. for payment of principal in* 6 *months*, p. 696, *or on demand*, p. 700, *and interest after default*, p. 696. AND THIS INDRE ALSO WITNESSETH that for the consideration aforesd the sd A. doth hereby assign unto the sd B., his exors, admors, and assigns, ALL AND SINGULAR the furniture, plate, china, glass, books, pictures, prints, works of art and household effects and articles of use and ornament which now are or hereafter during the continuance of this security shall be (*b*) in or about the messuage or tenement known as No. —— —— street in the parish of —— and county of ——[ALL THE crops now growing or which shall at any time hereafter

Further witnesseth. Assignment. Furniture.

operation is repeated, be effectual, so far as the Bills of Sale Act is concerned : *Smale* v. *Burr*, L. R. 8 C. P. 64 ; *Ramsden* v. *Lupton*, L. R. 9 Q. B. 17 ; and see *Ex parte Harris*, L. R. 8 Ch. 48. But it must be remembered that the subsequent bill of sale, if it comprises all the property of the debtor, will be void under the 6th section of the Bankruptcy Act, 1869, as against the trustee in bankruptcy, as being a security for a past debt : *Ex parte Cohen*, L. R. 7 Ch. 20 ; *Ex parte Stevens*, L. R. 20 Eq. 786 ; but see *Re Jackson*, 4 Ch. D. 682. *Eighthly*, an agreement to give a bill of sale need not be registered : *Ex parte Homan*, L. R. 12 Eq. 598 ; but see *Ex parte Fisher*, L. R. 7 Ch. 636. If, however, the agreement is intended to operate as an immediate equitable assignment or security, it requires registration : *Ex parte Mackay*. L. R. 8 Ch. 643 ; *Ex parte Conning*, L. R. 16 Eq. 414 ; *Edmunds* v. *Edwards*, 2 Ch. D. 291. *Ninthly*, the registration of a bill of sale will not give it priority over a previous unregistered bill of sale ; but see *Richards* v. *James*, L. R. 2 Q. B. 285 ; *Re Barrand*, 3 Ch. D. 324, 4 Ch. D. 23. *Tenthly*, registration of a bill of sale given by a company is not necessary as against the liquidator upon the winding up of the company : *Re Marine Mansions Company*, L. R. 4. Eq. 601. *Eleventhly*, a bill of sale must be stamped before registration, 33 & 34 Vic., c. 97, s. 57. *Twelfthly*, a bill of sale must be re-registered every 5 years, 29 & 30 Vic., c. 96, s. 4.

(*b*) That a mortgage comprising future acquired chattels will be effectual in equity if not at law, see 2 Dav. Prec., p. 718, 3rd ed. See as to the distinction between a present assignment of and a mere license to seize after-acquired chattels, *Reeve* v. *Whitmore*, 4 D. J. & S. 1.

during the continuance of this security be growing in or upon the —— farm in the parish of —— and county of ——, now in the occupation of the sd A. under a yearly tenancy, *or*, "an Indre of Lease, &c." : AND ALSO all horses, cattle, sheep, carts, carriages, farming machinery and utensils, tools, wheat, oats, barley, roots, hay, straw, consumable stores, live and dead stock, furniture, household goods, and all other effects which now are or shall hereafter during the continuance of this security be in or upon or belonging to the sd farm or the farm-house or other erections or buildings thereon,] *Estate Clause*, p. 264, TO HAVE AND TO HOLD all the said premises hereinbefore expressed to be hereby assigned UNTO the said B., his exors, admors, and assigns, subject to the proviso for redemption hereinafter contained. *Proviso for redemption*, p. 702, *form* II. *or* p. 704, *form* IX. AND IT IS HEREBY agreed and declared that it shall be lawful for the sd B., his exors, admors, or assigns at any time hereafter, either before or after the principal moneys hereby secured shall have become payable, [*or*, whether demand shall or shall not have been made of payment of the principal moneys hereby secured], either by himself or themselves or his or their servants or agents, to take possession of all and singular or any part of the premises hereby mortgaged, and either to remove and carry away the same or to remain in possession thereof without removing the same, and also to relinquish possession of the same and again to retake and retain possession thereof without invalidating this security, and for the purposes aforesd or any of them or for any purpose connected therewith to have full liberty of ingress,

Crops and farming stock.

Habendum

To mortgagee.

Power to mortgagee to take possession. (*c*)

(*c*) This power should always be inserted when the mortgagor is a trader. See the second division of note (*a*), p. 810. If the power is to take possession on demand and default of payment, a reasonable time must be allowed for payment before seizure, *Brighty* v. *Norton*, 3 Best & Smith, 305 ; *Massey* v. *Sladen*, L. R. 4 Ex. 13 (though a continuing possession which in its inception was premature may be treated as a fresh taking of possession so as to be effectual : *Bramwell* v. *Eglinton*, 5 Best & Smith, 39). It is better to avoid all such questions by giving the mortgagee power to take possession, although the money is not due and no demand of payment has been made, especially if the deed is not registered.

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Covenant by mortgagor to keep up value.

That mortgagee may enter and view.

egress, and regress to and from the sd messuage or tenement [the sd farm, farmhouse, erections and buildings] hereinbefore mentioned at all reasonable times: AND THE SAID A. doth hereby for himself, his heirs, exors, and admors, covenant with the sd B., his exors, admors, and assigns, that he the said A., his exors, admors, and assigns, will during the continuance of this security at all times keep up the total value of the property and effects for the time being comprised in or subject to this security to the sum of £—— at the least: AND that it shall be lawful for the sd B., his exors, admors, and assigns at all reasonable times during the continuance of this security to enter into and upon the sd messuage or tenement [farm, farmhouse, buildings and erections] or any part thereof, to view the state of such property and effects and take inventories thereof. *Covenant by A. to insure against fire and repair*, p. 720, *describing the property to be insured as*, "the sd premises hereby mortgaged," *or if farming stock*, "such of the sd premises hereby mortgaged as may be of an insurable nature;" *Power of sale*, p. 708, *the notice being given to A., his exors, admors, or assigns, or left on the sd messuage [or farm-house;] Mortgagee's indemnity clause*, p. 729; *Covenants by A. for title*, p. 739.

IN WITNESS, &c.

XXXV.

MORTGAGE *by* COPARTNERS *of a* FREEHOLD *and* LEASEHOLD COLLIERY, *fixed and moveable* MACHINERY *and plant to secure an* ACCOUNT CURRENT *with a* BANKING FIRM. PROVISO *that* SECURITY *is* NOT *to be* REGISTERED *as a* BILL *of* SALE. VARIATIONS *where the* COLLIERY *belongs to a* COMPANY *and the* BANK *is a* LIMITED COMPANY, *and where the* DEED IS *to be* REGISTERED *as a* BILL *of* SALE. (*a*)

(*a*) As to mortgages of chattels and fixtures, see p. 810, note; and as to fixtures, see *Meux* v. *Jacobs*, L. R., 7 H. L. 481. Compare Prec. III. p. 743,

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Parties, A. B. and C., *mortgagors*, [The —— Company Limited, hereinafter called the Colliery Company] 1; D. E. and F., carrying on business in copartnership as bankers at —— under the firm of D. and Co. (hereinafter called the mortgagees) [the —— Banking Company Limited, hereinafter called the Banking Company], 2: WHAS the sd A., B. and C. carry on the business of colliery proprietors under the firm or title of A. and Co. [the Colliery Company carry on their business] at the collieries and works known as, &c., situate, &c., which are partly of freehold and partly of leasehold tenure: AND WHAS the freehold portion thereof being the hereditaments hereinafter expressed to be hereby granted were by an indre dated, &c., conveyed or assured to the use of the sd A. B. and C. in fee simple as joint tenants for the purposes of the sd copartnership [the Colliery Company in fee simple]: AND WHAS the leasehold portion of the sd colliery and premises is held under an indre of lease dated, &c., and expressed to be made, &c., whereby, *recite mining lease to A. B. and C.* [*Colliery Company*] *setting out the parcels and the clauses having reference to the erection and removal of machinery, &c., see* p. 236, *form* XXII.: AND WHAS the sd A. B. and C. [Colliery Company] are entitled to certain fixed machinery, buildings, engines, rails, turntables, erections and other fixtures erected or fixed on the sd freehold and leasehold hereditaments [the fixed machinery and other fixtures on the sd freehold hereditaments being described in the 1st schedule hereto, the fixed machinery and fixtures on the sd leasehold hereditaments which the sd A. B. and C. [Colliery Company] are not entitled to remove, having regard to the covenants in the sd lease, being described in the 1st part of the 2nd schedule hereto, and the fixed machinery and fixtures on the sd leasehold hereditaments which are removeable by the said A. B. and C.

Recitals.

Mortgagors carry on business.

Title to freeholds.

Title to leaseholds.

Title to fixed machinery.

of an equitable mortgage to bankers, and the Precedents, p. 56, and p. 170 of a guarantee to bankers and bond for the same purpose. For a form of mortgage to a Banking Company constituted under 7 Geo. 4, c. 46, see Davidson, ii. 913, 3rd ed.; and see the note to the precedent, p. 937, as to the constitution of banking companies.

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[Colliery Company] being described in the 2nd part of the sd 2nd schedule]: AND WHAS the sd A. B. and C. [Colliery Company] are also possessed of moveable machinery, engines, waggons, trucks, tools, implements, plant and effects belonging to or used in connection with the sd colliery and works [the particulars whereof are specified in the 3rd schedule hereto], all of which, together with any other moveable machinery, &c., which may at any time during the continuance of the security intended to be hereby effected, be in or upon or belonging to the sd collieries, works, and premises, or used in or about or in connection with the same, are hereinafter called the plant: AND WHAS the sd A. B. and C. keep an account for the purposes of their sd copartnership in the name of A. and Co. [the Colliery Company keep an account] with the mortgagees [Banking Company]: AND WHAS the mortgagees [Banking Company] may from time to time be under advance to or on account of the sd firm of A. and Co. [the Colliery Company] in respect of bills or acceptances discounted for them or otherwise in the usual course of such banking business, and the mortgagees [Banking Company] have also agreed to make advances to the sd firm of A. and Co. [Colliery Company] by way of loan by permitting them to overdraw their banking account or granting them other accommodation upon an agreement that all moneys which shall become owing on balance of account or otherwise from the sd firm of A. and Co. [Colliery Company] to the mortgagees [Banking Company] with interest, should be secured in manner hereinafter appearing: NOW THIS INDRE WITNESSETH that in pursuance of the recited agreement, and in consideration of the premises, *joint and several covenants by A. B. and C. [the Colliery Company]* that they the sd A. B. and C. or the persons or person hereafter from time to time constituting the sd firm of A. and Co. or some or one of them, their or some or one of their heirs, exors, or admors [that they the Colliery Company] will on demand made to them or him or

Title to moveable machinery.

Account current kept.

Advances by bank.

Witnesseth.

Covenant to pay balance on demand,

some or one of them, or left at the sd colliery or works, pay to the mortgagees or the persons or person for the time being constituting the sd firm of D. and Co. or their respective exors, admors, or assigns [the Banking Company or their assigns], or to one of the cashiers for the time being of the sd Bank, the balance which shall for the time being be owing from the sd A. B. and C. or the persons or person from time to time constituting the sd firm of A. and Co. or any of them, their or any of their heirs, exors, or admors [from the Colliery Company] to the mortgagees or the persons or person hereafter constituting the sd firm of D. and Co. or their or his respective exors, admors, or assigns [the Banking Company or their assigns] in respect of bills, notes, or drafts accepted, paid, or discounted, or loans, credits, or advances made to or for the use or accommodation or at the request of the sd firm of A. and Co. [the Colliery Company] and for interest, commission, or otherwise, together with interest on such balance from the day of such demand having been made or left till actual payment after the rate of £—— per cent. per annum: AND THIS INDRE ALSO WITNESSETH that in further pursuance of the sd agreement and for the consideration aforesd, the sd A. B. and C. do, and each of them doth [the Colliery Company do] hereby grant unto the mortgagees, their heirs and assigns [the Banking Company and their assigns], *Freehold parcels*, p. 251: AND ALSO all and singular the fixed machinery, buildings, engines, rails, turntables, erections and fixtures now erected, fixed or being thereon [*or*, "described in the sd 1st schedule hereto"]: AND all other the fixed machinery, &c., *as above*, which may at any time hereafter during the continuance of this security be erected, fixed, or placed upon the said freehold hereditaments and premises or any part thereof, *General words*, p. 264; *Estate clause*, p. 264: TO HAVE AND TO HOLD the said hereditaments, fixtures, and premises hereinbefore expressed to be hereby granted UNTO AND TO THE USE of the mortgagees, their heirs and assigns [the Banking Company and their assigns], subject to the proviso for re-

with interest from demand.

Further Witnesseth.

Grant.

Freehold parcels and machinery.

Habendum

To mortgagees.

PREC. XXXV.

demption hereinafter contained: AND THIS INDRE ALSO WITNESSETH that in further pursuance of the recited agreement and for the consideration aforesd, the sd A. B. and C. do and each of them doth [the Colliery Company do] hereby demise (*b*) unto the mortgagees their exors, admors, and assigns [the Banking Company and their assigns], ALL THOSE the pieces or parcels of land, mines or beds of coal, powers, liberties, and authorities by the hereinbefore recited indre of lease expressed to be demised with their and every of their appurtenances: AND ALSO all and singular the fixed machinery, buildings, engines, rails, turntables, erections and fixtures now erected, fixed, or being thereon [*or*, "described in the 1st and 2nd (*c*) parts of the sd 2nd schedule hereto]: AND ALL other fixed machinery, &c., *as above*, whether removeable by the lessee or not, which may at any time hereafter during the continuance of this security be erected, fixed or placed upon the sd leasehold hereditaments and premises or any part thereof, TO HAVE AND TO HOLD the sd premises hereinbefore expressed to be hereby demised UNTO the mortgagees, their exors, admors, and assigns [the Banking Company and their assigns] for the residue of the sd term of —— years granted by the sd indre of lease, except the last day thereof, subject to the proviso for redemption hereinafter contained: AND THIS INDRE ALSO WITNESSETH that in further pursuance of the said agreement and for the consideration aforesd, the sd A. B. and C. do and each of them doth [the Colliery Company do] hereby assign unto the mortgagees, their exors, admors, and assigns [the Banking Company and their assigns], ALL THE plant and all coals and minerals which now are or which at any time during the continuance

Further Witnesseth.

Demise.

Leasehold parcels.

Machinery.

Habendum

To mortgagees.

Further Witnesseth.

Assignment.

Plant.

(*b*) As to mortgages of leaseholds by demise, see p. 756, note.

(*c*) The tenant's fixtures though removable by the mortgagor are demised with the land instead of being assigned, in order that the mortgagee may have no right to sever them, and the mortgage may be effectual as to them without registration as a bill of sale, see p. 810 note. If the deed were to be registered, the removable fixtures should be omitted from the demise and included in the subsequent assignment.

PREC. XXXV.

of this security shall have been raised and be on any part of the sd freehold and leasehold premises hereby mortgaged respectively, To HAVE AND TO HOLD all the sd premises hereinbefore expressed to be hereby assigned UNTO the mortgagees, their exors, admors, and assigns [the Banking Company and their assigns] subject to the proviso for redemption hereinafter contained, PROVIDED ALWAYS, and it is hereby agreed and declared, that if the sd A. B. and C. or the persons or person hereafter constituting the sd firm of A. and Co., or any of them, their or any of their heirs, exors, admors, or assigns [the Colliery Company or their assigns] shall on demand or without any demand being made pay to the mortgagees or the persons or person hereafter constituting the sd firm of D. and Co. or their or his respective exors, admors, or assigns [the Banking Company or their assigns] or to one of the cashiers of the sd Bank the balance which shall for the time being be owing as hereinbefore mentioned pursuant to the covenant hereinbefore contained, then they the mortgagees, or their heirs, exors, admors, or assigns respectively [the Banking Company or their assigns] shall at any time thereafter upon the request and at the cost of the sd A. B. and C., their heirs, exors, admors, or assigns [the Colliery Company or their assigns] reconvey, surrender, and reassign respectively the sd respective premises hereby mortgaged unto the sd A. B. and C., their heirs, exors, admors, and assigns according to the nature of the sd respective premises and their rights and interests therein [to the Colliery Company and their assigns] or as they shall direct; *Declaration of trust of nominal reversions of leaseholds*, p. 712: AND THE sd A. B. and C. do hereby for themselves their heirs, exors, and admors, and as separate covenants each of them doth hereby for himself, his heirs, exors, and admors [the Colliery Company do hereby for themselves] covenant with the mortgagees their exors, admors, and assigns [the Banking Company and their assigns] that they the sd A. B. and C., and their respective heirs, exors, admors, and assigns [that the Colliery Company and their

Habendum.

To mortgagees.

Proviso for redemption.

Covenant by mortgagors to keep in repair and insure.

PREC. XXXV.

assigns] will during the continuance of this security keep the sd buildings, machinery, engines, rails, turntables, erections, fixtures, plant, and premises hereby mortgaged in good repair and working order, and will keep such of the same premises as are or shall be of an insurable nature insured against loss or damage by fire, *continue covenant for insurance*, p. 720, *mutatis mutandis, and saying*, "the mortgagees or their exors, admors, or assigns," *or* "the Banking Company or their assigns," *and* "the sd A. B. and C., their heirs, exors, admors, or assigns," *or* "the Colliery Company or their assigns:" AND IT IS HEREBY agreed and declared that all buildings, fixed or moveable machinery, engines, rails, turntables, fixtures, plant, coal, effects, and things which may at any time during the continuance of this security be erected, placed or brought upon any of the sd hereditaments and premises hereby mortgaged, shall be subject to this security and to all the provisions herein contained: AND IT IS HEREBY also agreed and declared that it shall be lawful for the mortgagees, their exors, admors, or assigns [the Banking Company or the manager or any other officer or agent thereof] or any person nominated either in writing or otherwise by them or him at any time or times hereafter without any further consent on the part of the sd A. B. and C., or any of them, their or any of their heirs, exors, admors, or assigns [the Colliery Company or their assigns] to take possession of all and singular the plant and coals actually raised (*a*) which shall for the time being be on or about the sd freehold and leasehold premises hereby mortgaged respectively for the purposes of this security, and either to remove and carry away the same or to remain in possession thereof without removing the same, and also to relinquish possession of the same and again to retake and retain possession without invalidating this security, and for the purposes aforesd or any of them, or for any purpose connected there-

Future plant to be subject to mortgage.

Power to mortgagees to take possession.

(*a*) If the mortgage were to be registered under the Bills of Sale Act, this should be extended to the machinery and fixtures annexed to the freeholds and such of those annexed to the leaseholds as are removable..

PREC. XXXV.

Power of sale.

with, to have full liberty of ingress, egress, and regress to and from the sd mortgaged premises and every part thereof at all reasonable times : PROVIDED ALWAYS, and it is hereby agreed and declared, that it shall be lawful for the mortgagees, or the survivors or survivor of them, or the exors or admors of such survivor their or his assigns [the Banking Company or their assigns] at any time hereafter without any further consent on the part of the sd A. B. and C., or any of them, or any of their heirs, exors, admors, or assigns [the Colliery Company or their assigns] to sell all or any part or parts of the sd premises hereby mortgaged either together or in parcels [but so that the fixtures, machinery, engines, rails, turntables, erections, and fixtures, annexed to the sd freehold or leasehold premises shall not be sold separately or apart from the buildings or soil to which the same may be annexed (*b*),] *continue power of sale and ancillary clauses*, p. 709, *form* IV., *if the mortgage is to a Company omit the declaration that the heirs of the surviving mortgagee are to join in conveyances, the notice to be given*, "to the sd A. B. and C., their heirs, exors, admors, or assigns, or some or one of them [to the Colliery Company or their assigns]," *or left*, "[at the registered office of the Colliery Company or] at or upon some part of the sd mortgaged premises," *the receipt clause will run*, "AND IT IS HEREBY also agreed and declared that upon any such sale as aforesd, the receipt of the mortgagees, or the survivors or survivor of them, or the exors or admors of such survivor, their or his assigns, [the Banking Company or their assigns] shall &c.," *the surplus purchase moneys to be made payable* "to the sd A. B. and C., their exors, admors, or assigns [the Colliery Company or their assigns] as personal

(*b*) If the mortgage was to be registered as a bill of sale, the words in this bracket would be omitted, and the following substituted : "And as to the fixtures, machinery, &c., other than such as are annexed to the sd leasehold premises and are irremovable, either together with or separately and apart from the buildings or soil to which the same may be annexed."

PREC. XXXV.

estate ; " *Mortgagee's indemnity clause*, p. 729 : PROVIDED (*c*) ALWAYS, and it is hereby agreed and declared, that these presents are intended to be a continuing security for the balance from time to time owing on the account of the sd copartnership firm of A. and Co. [the Colliery Company] to the sd copartnership firm of D. and Co. [the Banking Company] notwithstanding any change in the sd firm of A. and Co. [or the sd firm of D. and Co.] by the death or retirement of any member or members thereof or the introduction of any new member or members or otherwise ; *Joint and several covenants by A. B. and C.* [*covenants by the Company*] *for title*, p. 736, *adding at the end of the covenant for right to convey, a covenant for right to assign*, "the moveable machinery, &c. hereby mortgaged " : PROVIDED ALWAYS, and it is hereby agreed and declared, that these presents shall not be registered as a Bill of Sale.

Proviso as to changes in firms.

Security not to be registered.

IN WITNESS, &c.

XXXVI.

PREC. XXXVI.

MORTGAGE *by* LIMITED COMPANY *of* FREEHOLD *and* LEASEHOLD IRONWORKS, MINES, *and* MINING PLANT, *for securing payment of existing and future* BILLS *of* EXCHANGE, *subject to a* PRIOR CHARGE. Short Form. (*d*)

Parties, the —— Company, Limited (hereinafter called the Company), 1 ; A., *mortgagee*, 2 : WHEREAS the sd A. has drawn on the Company, and the Company have accepted the bills of exchange mentioned in the schedule hereto, and the sd A. may from time to time, in the usual course of

Recitals. Bills drawn.

(*c*) This clause will be omitted if both mortgagors and mortgagees are Companies.

(*d*) See p. 810, note (*a*). And as to mortgages by Companies, see Davidson, Vol. ii., p. 1218, note (*c*), 3rd edition.

business, draw on the Company and the Company may accept other bills of exchange: AND WHAS it has been agreed between the Company and the sd A. that the payment of the sd present and future bills of exchange at maturity shall be secured in manner hereinafter appearing: NOW THIS INDRE WITNESSETH that in pursuance of the sd agreement, and in consideration of the premises, the Company do hereby (*e*), as to such parts of the property hereinafter mentioned as are of freehold tenure, grant, and as to such parts of the same property as are of leasehold tenure demise, and as to all the residue of such property assign to the sd A., his heirs, exors, admors, and assigns respectively, ALL AND SINGULAR the iron mines and other mines and minerals, lands, hereditaments, works, buildings, erections, furnaces, foundries, machines, engines, railways, tramways, roads, trams, waggons, trucks, machinery, implements, tools, plant, working stock, and other estate and effects, whatsoever and wheresoever, whether real or personal, which are now or may at any time during the continuance of this security be held by or belonging to the Company, TOGETHER WITH all rights, easements, and appurtenances to the sd premises belonging or reputed to belong or therewith held or enjoyed, *Estate clause*, p. 264, EXCEPT

Agreement.

Witnesseth.

Conveyance.

Parcels.

General words.

(*e*) As there is a prior mortgage, this deed might be in the form of a charge, instead of a conveyance with a proviso for redemption, thus:—"The Company do hereby charge all and singular," &c. *Parcels as in the text, estate clause subject to the prior mortgage*, "with the payment at the maturity thereof respectively," *&c., as in the proviso for redemption in the text.* In the case of an ordinary mortgage to secure advances, this would run: "with the payment to the sd A., his exors, admors, or assigns, of the sd principal moneys and interest pursuant to the covenant of the Company hereinbefore contained." In the covenants for title, say that, "the Company has full power to charge the sd respective premises hereby mortgaged in manner and subject as aforesd." The form of a charge might be a means of avoiding the necessity for obtaining the lessor's licence in the case of leaseholds subject to a condition against assigning or underletting without licence.

PREC. XXXVI.

Habendum.

To mortgagees.

Subject to prior charge.

Proviso for redemption.

the respective last days hereinafter excepted of the respective terms of years for which the sd leasehold premises respectively are held: To HAVE AND TO HOLD all the sd premises hereinbefore expressed to be hereby granted, demised, and assigned respectively, UNTO AND TO THE USE of the sd A., his heirs, exors, admors, and assigns respectively, according to the tenure or nature of the same respective premises, as to such parts of the sd premises as are of leasehold tenure, for the respective residues now unexpired of the several terms of years for which the same premises respectively are held by the Company except the last day of each such term: And as to all the residue of the sd premises absolutely, SUBJECT, as to such of the sd premises as are comprised in or subject to the same, to a mortgage dated the —— day of ——, made by the Company to X. and Y. in trust for securing the debentures therein mentioned or referred to, amounting to the sum of £—— and the interest thereon, and subject to the proviso for redemption hereinafter contained: PROVIDED ALWAYS, and it is hereby agreed, that if the Company or their assigns shall, at the maturity thereof respectively, pay the several bills of exchange mentioned in the sd schedule hereto, and every other bill of exchange which may hereafter be drawn on the Company by the sd A. and accepted by the Company, then the sd A., his heirs, exors, admors, or assigns respectively, shall at any time thereafter, upon the request and at the cost of the Company or their assigns, reconvey, surrender, and reassign the sd respective mortgaged premises to the Company or their assigns, or as they shall direct, subject to the sd prior mortgage if subsisting; *Declaration of trust of nominal reversion of leaseholds for A.* p. 712 (*f*): AND THE Company do hereby for themselves and their assigns,

(*f*) If the mortgage is not to be registered as a bill of sale, add power to take possession as in Prec. XXXV., p. 820, "either before or after any of the sd bills of exchange shall have arrived at maturity." This power must, of course, in any case be inserted if the mortgagor is not a company, and is in trade, see p. 813, note (*c*).

PREC. XXXVI.

Power of sale.

covenant, &c., *to insure and repair, if required*, p. 720, *mutatis mutandis; Power of sale*, p. 709, *or* p. 711, *form* V., *mutatis mutandis*, (*g*) *the power not to be exercised*, "until default shall have been made in payment at maturity of some or one of the bills of exchange, the payment whereof is intended to be hereby secured," *and omitting the rest of that clause; in the clause as to application of the purchase money say*, "in or towards payment of such of the sd bills of exchange as shall have arrived at maturity, and in the next place, in case any of the sd bills shall not have arrived at maturity, shall pay into the Bank of Messrs. ——, at ——, or some other bank to be selected by the sd A., his exors, admors, or assigns, the residue of the sd moneys, or so much thereof as shall be sufficient for the payment of such last mentioned bill or bills, and shall from time to time apply the same moneys in or towards payment of such bills, or any of them at maturity, and then pay the surplus, if any, of the sd moneys to the Company or their assigns: *Mortgagee's indemnity clause*, p. 729; *Covenants for title*, p. 736, *form* V., *mutatis mutandis*.

IN WITNESS, &c.

Schedule.

XXXVII.

PREC. XXXVII.

MORTGAGE *of a* BUILDING LEASE *where the mortgage* MONEY *is to be* ADVANCED *by* INSTALMENTS *as wanted.* LOAN *to be continued for a* TERM CERTAIN.

(*g*) If the mortgage is not to be registered as a bill of sale, add in the first clause giving the power to sell, after the words "in parcels or separately" the words "but not so as to sell any fixed machinery or fixtures apart from the hereditaments to which the same are or shall be annexed."

PREC. XXXVII.

POWER *to* MORTGAGEE *to complete* BUILDINGS *on Mortgagor's* DEFAULT, &c.

Recitals.

Parties, A., *mortgagor*, 1; B., *mortgagee*, 2: *Recite lease from* K. *to* A. *formally, setting out the covenant to build*, p. 235: AND WHAS in pursuance of the sd recited covenant, the sd A. has commenced the erection of buildings on the piece of land demised by the sd indre of lease: AND WHAS the sd A. has requested the sd B. to lend him the sum of £—— for the purpose of enabling him to complete the sd buildings, which the sd B. has agreed to do upon having the repayment of the same with interest secured in manner hereinafter appearing: AND WHAS upon the treaty for the sd loan, it was agreed that the sum of £——, part of the sd sum of £——, should be advanced to the sd A. by the sd B. on the execution of these presents, and that the residue of the sd sum of £—— should be advanced by the sd B. to the sd A., by instalments in manner and on the conditions provided by the covenant of the sd B. hereinafter contained: NOW THIS INDRE WITNESSETH that in consideration of the sum of £——, now paid to the sd A. by the sd B., the receipt, &c., and of the covenant of the sd B. hereinafter contained for the loan to the sd A. of the further sum of £—— by the instalments and on the conditions hereinafter mentioned, *Covenant by A. for payment of present and future advances*, p. 697; *and interest after default*, p. 697; *Further testatum demise of premises comprised in lease as in Prec.* XII., p. 756: "TOGETHER WITH all buildings and erections which now are, or which shall at any time during the term hereby granted, be erected and standing on the sd piece of land and premises," *for the term of the lease except the last day, subject to redemption; Proviso for redemption*, p. 702; *Declaration of trust of nominal reversion*, p. 712: AND THE sd B. doth hereby for himself, his heirs, exors, and admors, covenant with the sd A., his exors, and admors, that he the sd B., his exors, admors, or assigns, will from time to time, subject as hereinafter mentioned, advance to the sd. A., his exors, or

Commencement of buildings.

Agreement for loan.

Loan to be by instalments.

Witnesseth.

Covenant for payment.

Further witnesseth. Demise.

Covenant by mortgagee to make advances.

admors, such further sum or sums of money as he or they may from time to time require, not exceeding in the whole, with the sd sum of £—— now advanced, the sum of £——, by monthly instalments, one such instalment to be payable on the —— day of each calendar month, and the first of such instalments to be paid on the —— day of —— next, and no such instalment to exceed four-fifths of the prime cost of the works executed by the sd A., his exors or admors, during the then preceding calendar month, according to the value of the same as computed by Mr. ——, or other the surveyor who may be appointed from time to time in writing by the sd B., his exors, admors, or assigns, or, in case of his or their default in making such appointment for the period of seven days after being required in writing so to do by the sd A., his exors, or admors, who may be appointed by the sd A., his exors, or admors: And it is hereby agreed and declared that the reasonable costs of the sd surveyor shall be borne by the sd A., his exors, or admors, and that a sufficient portion of any instalment hereinbefore covenanted to be paid by the sd B., his exors, admors, or assigns, may be deducted therefrom and applied by him or them at his or their discretion, in payment of such costs: Provided always that in case the sd A., or the person or persons for the time being entitled to the benefit of the covenant by the sd B. hereinbefore contained, shall become bankrupt or make or enter into any arrangement or composition with his or their creditors, or propose any arrangement or composition for the settlement of his or their debts, or shall have any part of his or their estate taken in execution, or shall not make such progress with the sd erections and buildings as will enable them to be completed within the time and in the manner provided in the sd recited lease, or in case the sd A., his exors, or admors, shall assign or part with the sd lease, or the benefit of this present covenant, then and in any of such cases the obligation of the sd B., his exors, admors, or assigns to make or continue such

Mortgagor to pay costs of surveyor.

Liability to make advances to cease on mortgagor's bankruptcy, &c.

PREC. XXXVII.

Security to extend to all advances.

Loan to be continued for term certain.

Covenant by mortgagor to execute works.

Power for mortgagee to enter and execute works.

Sums expended to be a charge on premises.

advances as aforesd shall cease: PROVIDED ALSO, and it is hereby agreed, that this security shall extend to all sums which may be advanced by the sd B., his exors, admors, or assigns, to or on account of the sd A., his exors, admors, or assigns, although the obligation to make or continue the sd advances may have ceased; *Proviso for continuance of loan for a term certain*, p. 713, *with the variations for further advances, and inserting in lieu of the words in the note the words*, "in case none of the events shall happen in which the obligation of the sd B., his exors, admors, or assigns to make or continue the sd advances is to cease as hereinbefore mentioned," *or set out these events at length, and omit* "assigns" *in the case of A. throughout the clause:* AND THE sd A. doth hereby for himself, his heirs, exors, and admors, covenant with the sd B., his exors, admors, and assigns, that he the sd A., his exors, admors, or assigns will proceed with and continue the erection of the sd buildings and the execution of the sd works in a proper manner and with due diligence in accordance with the sd recited covenant, and in order that the same may be completed within the time provided by the sd covenant: AND THAT in case the sd A., his exors, admors, or assigns, shall make default in any such respect or shall in the judgment of the sd B. his exors, admors, or assigns, have made such default, or in case the sd A., his exors, admors, or assigns shall become bankrupt or shall make or enter into any arrangement or composition with his or their creditors, then and in any such case it shall be lawful for the sd B., his exors, admors, or assigns, to enter upon the sd premises hereby mortgaged, and to continue and complete the sd erections, buildings, and works, either by contract or by engaging workmen and providing materials and plant, and generally in such manner as he or they may think proper: AND THAT in such case, all sums of money which he or they shall expend thereon, with interest after the rate aforesd from the time or respective times of expending the same, shall be repaid to him or them by the sd A., his exors, admors, or assigns, on demand, and until repayment

shall be charged upon the sd mortgaged premises. *Covenant for insurance against fire*, p. 720, *see* p. 757, *note* (*b*); *Power of sale and ancillary clauses*, p. 708; *Mortgagee's indemnity clause*, p. 729; *Attornment by A.*, p. 725; *Covenants for title*, p. 733. PREC. XXXVII.

In witness, &c.

XXXVIII.

MORTGAGE *of* Bonds *and* Shares *of* Companies *incorporated under* Special Acts *and* Limited Companies, *some of the shares being fully and others partially* Paid Up, Shares *in a* Cost-book Mining Company *or other Company in which the* Shares *are* Transferable *without* Deed, *and* Scrip *of a foreign* Government *loan and of an English* Company, *for securing past and future* Trade Debts. PREC. XXXVIII.

Parties, A., *mortgagor*, 1; B., *mortgagee*, 2: Whas the sd A. is indebted to the sd B. in several sums of money, amounting to upwards of £—— for goods sold, moneys advanced, and otherwise, and in order to induce the sd B. to continue his dealings with the sd A. and for the purpose of securing the payment of all such sums of money as are or shall at any time hereafter be due and owing from the sd A., his exors, or admors, to the sd B., his exors, admors, or assigns, with interest for the same as hereinafter mentioned, the sd A. has transferred the bonds and shares mentioned in the 1st schedule hereto, (*b*) to the sd B., and has Recital of debt and deposit of shares, &c.

(*b*) The shares in the first schedule are fully paid up; those in the second schedule are liable to calls, and both those in the first and second schedules are transferable by deed with or without registration; those in the third schedule are transferable without any formal document, and as to them there is no legal objection to the execution of transfers in blank (see Lindley on Partnership, 3rd ed., p. 725; *Walker* v. *Bartlett*, 18 C. B. 845; *Re Tahiti Cotton Co.*, L. R. 17 Eq. 273). The scrip in the fourth schedule is scrip of a foreign loan, and is a negotiable instrument liable to forfeiture

PREC. XXXVIII.

deposited with the sd B. the certificates, together with transfers from him, the sd A., to the sd B., of the shares mentioned in the 2nd schedule hereto, but such transfers have not been executed by the sd B. or registered, and the sd A. has executed and deposited with the sd B., transfers in blank of the shares mentioned in the 3rd schedule hereto, and has deposited with the sd B. the scrip certificates mentioned in the 4th and 5th schedules hereto, and has agreed to execute these presents: NOW THIS INDRE WITNESSETH that in consideration of the sd A. being indebted to the sd B. as aforesd, and of the sd recited agreement and the premises, *covenant by A. to pay on demand*, p. 700, to the sd B., his exors, admors, or assigns, ALL AND EVERY the sum and sums of money which are now or shall hereafter be due and owing from the sd A. to the sd B., his exors, admors, or assigns, in respect of goods sold, advances made, or on any other account whatsoever, TOGETHER WITH interest for the same respectively, after the rate of £—— per cent. per annum, from the time or respective times of the same having become due without deduction: PROVIDED ALWAYS, and it is hereby agreed and declared, that if the sd A., his heirs, exors, admors, or assigns, shall pay to the sd B., his exors, admors, or assigns, all such sums and sum of money as aforesd with interest, pursuant to the covenant of the sd A. hereinbefore contained, then the sd B., his exors, admors, or assigns, shall at any time thereafter, upon the request and at the cost of the sd A., his exors, admors, or assigns, retransfer and deliver up to him or them, or as he or they shall direct, all the sd bonds, shares, certificates, scrip, transfers and premises hereinbefore

Witnesseth.

Covenant to pay present and future debts,

with interest.

Proviso for redemption.

on nonpayment of the remaining instalments, and when fully paid up is exchangeable for a bond of the Government (see *Goodwin* v. *Roberts*, 1 App. Cas. 476); the scrip mentioned in the fifth schedule is scrip of a company in which the scripholder does not acquire the rights of a shareholder until his scrip has been exchanged for share certificates and his name has been inserted in the company's register of shareholders. See Lindley on Partnership, 128. As to the form of a mortgage of shares and bonds, see 2 Davidson Prec., 3rd ed., p. 1202, note; Elphinstone, Introd. Conv., 210.

mentioned to have been respectively transferred to and deposited with the sd B., or in case any of the sd scrip certificates shall have been exchanged for bonds or shares, then such bonds or shares, all which premises are hereinafter collectively called the sd mortgaged premises: AND IT IS HEREBY agreed and declared, that until the transfers of the sd shares specified in the sd 2nd and 3rd schedules shall have been respectively completed and perfected by registration, so far as the same may be necessary, the sd A., his exors and admors, shall stand possessed thereof in trust for the sd B., his exors, admors, and assigns, subject to such equity of redemption, if any, as shall for the time being be subsisting therein by virtue of the proviso for redemption hereinbefore contained; *Covenant by A.*, THAT he, his exors or admors, will, during the continuance of this security, duly and punctually pay all calls and instalments that may be made or become due in respect of any of the sd mortgaged premises: AND THAT in default of his or their so doing, the sd B., his exors, admors, or assigns, may make such payments, and that all sums paid by him or them for that purpose with interest for the same after the rate aforesd, shall be repaid by the sd A., his heirs, exors, or admors, on demand, and shall in the meantime be a charge on all the sd mortgaged premises: PROVIDED ALWAYS, that it shall be lawful for the sd B., his exors, admors, or assigns, as well before as after the sd transfers of the sd shares specified in the sd 2nd and 3rd schedules shall have been completed and perfected as aforesd, to receive all dividends and bonuses becoming due thereon: AND ALSO to exchange the scrip certificates mentioned in the sd 4th and 5th schedules for the bonds or shares for which the same may respectively be exchangeable: AND ALSO at any time or times hereafter, *continue power of sale*, p. 711, *adding at the end of the clause giving the authority to sell, the words* "expressly including the completion and registration of the sd transfers of the sd shares mentioned in the sd 2nd and 3rd schedules or any of them, or the filling in of the name

Mortgagor to hold shares in trust for mortgagee till register of transfers.

Covenant by mortgagor to pay calls.

Power for mortgagee to pay calls.

Power to mortgagee to receive dividends.

Exchange scrip certificates.

Power of sale.

PREC. XXXVIII.

or names of any person or persons as transferee or transferees in the sd transfers of the sd shares mentioned in the sd 3rd schedule or any of them, and the delivery of the sd scrip certificates or any of them to any person or persons, *omitting the clauses as to events in which power is to be exercised, the proviso for protection of purchasers, and the trusts of the purchase money:* PROVIDED ALWAYS, that no company, purchaser or other person paying any moneys, whether on sale or otherwise, to, or having any dealings with the sd B., his exors, admors, or assigns, in respect of any of the sd mortgaged premises, shall be bound to enquire whether any moneys remain due on this security, or otherwise as to his or their right to receive such moneys or the regularity of any such sale or other dealing, or be affected by any irregularity therein; *Trusts of moneys to be received*, p. 717, "in respect of any of the sd mortgaged premises, whether upon a sale or otherwise;" *Covenant by A. for further assurance*, p. 739, *form* VI. *saying*, "for effectually vesting the sd mortgaged premises or any of them in the sd B., his exors, admors, or assigns, or any purchaser or purchasers from him or them, and for enabling the sd B., his exors, admors, or assigns, at any time or times hereafter, while any money shall remain on the security of these presents, to receive any sums of money becoming due or receivable either for principal or for interest, dividends, or bonuses, in respect of any of the sd mortgaged premises: AND FURTHER, that he the sd A., his exors, admors, or assigns, will, if required by the sd B., his exors or admors, permit all or any of the shares specified in the sd 2nd and 3rd schedules, to be revested in him or them, the sd A., his exors, admors, or assigns, in such manner as the sd B., his exors, admors, or assigns, shall think fit: AND WILL indemnify the sd B., his exors and admors, against all costs and liabilities which may be incurred or sustained in respect of any of the sd mortgaged premises. *Mortgagee's indemnity clause*, p. 729: AND LASTLY, in consideration of the premises the sd A. doth hereby irrevocably appoint the sd B., his exors, admors, and assigns,

Proviso for protection of purchasers.

Covenant by mortgagor for further assurance.

To permit shares to be revested in him.

For indemnity.

Power of attorney.

to be the attorney and attornies of the sd A. in his name or otherwise to receive and give receipts for all or any moneys becoming due or receivable in respect of any of the sd mortgaged premises, and to execute and do all such transfers and things as are hereby covenanted to be executed and done by the sd A. (*c*) PREC. XXXVIII.

IN WITNESS, &c.

Five Schedules.

XXXIX.

MORTGAGE DEBENTURE *of a* LIMITED COMPANY *transferable by* DEED, *and forming part of a sum secured by a* TRUST DEED. VARIATIONS *where* COUPONS *for the* INTEREST *are attached, and where there is* NO TRUST DEED *for securing the Debentures* (*d*). PREC. XXXIX.

No. ——.

The —— Company, Limited.
Offices, ——

Mortgage debenture for £——, bearing interest at £—— per cent. per annum, and repayable on the —— day of ——, 18—.

[THIS DEBENTURE is one of a series of debentures constituting an aggregate sum of £——, secured by and issued or issuable subject to the provisions of a mortgage, dated the

(*c*) Notice of this deed should be given to the Companies whose shares are included in the second and third schedules, in order that the security may be effectual as against any subsequent transferees or incumbrancers, *Ex parte Shelley*, 4 D. J. and S. 543. As to whether such notice is necessary as against the trustee in bankruptcy of the mortgagor when a trader, see Lindley on Partnership, 3rd ed., p. 1184; *Ex parte Union Bank of Manchester*, L. R. 12 Eq. 354; *Ex parte Barry*, L. R. 17 Eq. 113.

(*d*) For a form of debenture payable to bearer, and operating as a floating security so as not to hinder sales, &c. of the company's property, see Davidson, Vol. ii., p. 1217, 3rd ed.; and for a form of trust deed for securing debentures, see p. 1229; and as to debentures of companies, see p. 1218, note (*c*).

PREC. XXXIX.

—— day of ——, of the property of the Company to A. and B. as trustees for the holders of the debentures.]

Covenant to pay.

THE —— Company (Limited) in consideration of the sum of £—— paid to them by —— of —— hereby covenant with the sd ——, his exors, admors, and assigns, to pay to him or them, at the registered office of the company for the time being, on the —— day of ——, the principal sum of £—— upon the surrender of this debenture, and to pay to him or them interest on the sd principal sum from the —— day of —— after the rate of £—— per cent. per annum half yearly on the —— day of —— and the —— day of —— in every year until and including the day of payment of the sd principal sum [upon presentation of the coupons for such interest hereto annexed at the bankers of the Company] the first of such payments of interest to be made on the —— day of ——: [*If there is no trust deed to secure the debentures add,*

Declaration that sum is part of a larger sum.

AND THE company hereby declare that the sd principal sum is part of a sum not exceeding in the whole £—— issued or issuable in like bonds: AND THE Company do

Charge.

hereby charge all the lands, mines, buildings, machinery, works, plant, effects, undertaking, and property of the Company, both real and personal and present and future, with the payment of the sd principal sum and interest hereby covenanted to be paid, to the intent that this security, and the other securities forming part of the above-mentioned sum of £——, may rank equally and rateably as a first charge upon the sd property and undertaking]: PROVIDED

Proviso as to transfer of debenture.

ALWAYS, that this security shall be transferable only by deed registered at the office of the Company; And that the deed of transfer shall be prepared by the Company (*e*); And the

(*e*) The following is a form of Transfer of a debenture of a Limited Company:

Form of transfer of debenture.

"I, A., of, &c. [*if by endorsement*, 'the within-named A.' *or if there is a previous endorsed transfer*, 'the above-named A.'], in consideration of the sum of £—— paid to me by B. of, &c., do hereby transfer to the sd B., his exors, admors, and assigns, the within-written debenture [*if by independent*

Company shall not be bound to register any address out of the United Kingdom: And that all letters and notices sent by post to the registered address of the holder of this security shall be deemed to be sufficiently delivered and given.

Given under the Common Seal of the sd Company this —— day of ——.

The Common Seal of the Company was affixed in the presence of }

——— }
——— } Directors.

———, Secretary.

Registered folio ——.

Form of Coupon annexed.

The —— Company, Limited.
Interest Warrant.

Mortgage debenture £——, No. ——, £——, payable —— 18— (subject to Income Tax, if any) on presentation at Messrs. ——, Bankers.

£——

——, Secretary.

deed, 'a certain debenture,' *insert short description*], and all principal moneys and interest thereby secured, and all my estate and interest therein. In witness whereof, I have hereunto set my hand and seal, this —— day of ——."

XL.

PREC. XL.

MORTGAGE *of* FREIGHT *and* EARNINGS *of, and* POLICIES *of Insurance on, a* SHIP, *to accompany* STATUTORY MORTGAGE (*a*).

Parties, A. (hereinafter called the mortgagor, which expression shall be taken to include his exors, admors, and assigns, where the context so requires or admits), 1; B. (hereinafter called the mortgagee, which expression shall be taken, &c., *as above*), 2: WHAS the mortgagor is the registered owner of the British ship —— of the port of ——: AND WHAS the sd ship is about to proceed on a voyage to —— and back to the United Kingdom [under a charter party, dated, &c., and made, &c.]: AND WHAS the mortgagor has, by a policy of insurance, dated the —— day of ——, and effected with Messrs. K. and Co., insured the sd ship and freight in the sum of £——; *Agreement for loan*, p. 691, "upon having the repayment thereof, with interest, at the rate of £—— per cent. per annum, secured by a statutory mortgage, and upon having the repayment of the sd principal moneys and interest further secured, and the repayment of all the other moneys, charges, and interest hereinafter mentioned, secured in manner hereinafter appearing: AND WHAS, by a statutory mortgage, bearing even date with these presents, under the hand and seal of the mortgagor, and intended to be registered at —— aforesd, the

Recitals: title of mortgagor.

Intended voyage.

Insurance.

Agreement for loan.

Statutory mortgage.

(*a*) See the Merchant Shipping Act, 1854, 17 & 18 Vic. c. 104, ss. 66—75; and the Amendment Act of 1855, 18 & 19 Vic. c. 91, s. 11; and 1862, 25 & 26 Vic. c. 63, s. 3; and as to the rights and liabilities of mortgagees of ships, see *Hutchinson* v. *Wright*, 25 Beav. 444; *European, &c., Company* v. *Royal Mail, &c., Company*, 4 Kay & J. 676; *Wilson* v. *Wilson*, L. R. 14 Eq. 32; *Liverpool, &c., Company* v. *Wilson*, L. R. 7 Ch. Ap. 507; *Bell* v. *Blyth*, L. R. 4 Ch. Ap. 136; Davidson's Precedents, vol. ii. 785, 3rd edit.; as to the effect of omitting to register a mortgage, *Keith* v. *Burrows*, 1 C. P. D. 722; as to mortgages of unfinished ships, see *Ex parte Hodgkin*, L. R. 20 Eq. 746.

mortgagor, in consideration of the sum of £—— this day lent to him by the mortgagee, has covenanted with the mortgagee, *recite covenants for payment of* £—— *and interest*, and for better securing the repayment in manner aforesd of the sd principal sum and interest, the mortgagor has thereby mortgaged the sd ship to the mortgagee [and in the sd mortgage is contained a proviso that the statutory power of sale shall not be exercised until the sd —— day of——]: NOW THIS INDRE WITNESSETH, that in further pursuance of the sd agreement, and in consideration of the premises, the mortgagor doth hereby assign unto the mortgagee ALL THE freight, passage-moneys, and earnings of the sd ship, or any shares or share thereof, on the now intended, or any future voyage: AND ALSO [the sd charter party, and] all future charter parties, contracts, and agreements in relation to the sd ship, or the freight, passage-moneys, or earnings thereof: AND ALSO the sd policy of insurance, and all and every present or future policy or policies of insurance on the sd ship, or her appointments, or any shares or share therein, or on the freight, passage-moneys, or earnings thereof, or any part or parts thereof, and all moneys insured by or to become payable under the sd policies, or any of them, and the full benefit and advantage thereof, *estate clause*, p. 264: TO HAVE AND TO HOLD all the sd premises hereinbefore expressed to be hereby assigned UNTO the mortgagee, subject to the proviso for redemption hereinafter contained: PROVIDED ALWAYS, and it is hereby agreed, that if the mortgagor shall on the —— day of —— next pay to the mortgagee the sd principal sum of £—— and interest intended to be secured by the sd statutory mortgage, and shall also on demand pay to the mortgagee all the expenses, premiums, commissions, charges, moneys, and interest hereinafter covenanted to be paid by the mortgagor to the mortgagee, then and in such case the mortgagee shall at any time thereafter, upon the request and at the cost of the mortgagor, reassign the sd premises hereby mortgaged to the mortgagor, or as he may direct;

Witnesseth.

Assignment of freight.

Charter party.

Policy.

Habendum.

To mortgagee.

Proviso for redemption.

PREC. XL.

Covenant by mortgagor that mortgagee may collect the insurance-money.

Not to vitiate policy.

To effect new policy if present policy vitiated.

To insure.

New policy to be subject to security.

To pay premiums.

Moneys paid to be a charge.

AND THE mortgagor doth hereby for himself, his heirs, exors, and admors, covenant with the mortgagee that in the event of the sd ship being lost or sustaining or being liable to contribute or pay for any loss, the mortgagee may collect the amount insured in respect of the sd ship or her freight or earnings, or paid by the underwriters, for the benefit of whom it may concern: AND FURTHER, that neither the mortgagor nor any person to whom the sd ship [is or] may be chartered or his or either of his servants will do or suffer anything whereby the present or any future policy of insurance on the sd ship or the freight, passage moneys or earnings thereof may be vitiated or become void, or the mortgagee may be prevented from receiving or recovering the money thereby intended to be assured, or any part thereof: AND THAT if the sd policy or policies shall be or become vitiated or void the mortgagor will immediately, at his own costs and charges, do all such things as may be necessary for effecting a new policy or new policies, and keeping the same on foot and vesting the same in and in the possession of the mortgagee in lieu of and in substitution for such policy or policies as may have become vitiated or void as aforesaid: AND FURTHER, that the mortgagor will at all times, during the continuance of this security, keep the sd ship and the freight, passage-moneys, and earnings thereof insured with Messrs. ——, or some other underwriters or insurance office or offices to be approved of by the mortgagee, in the sum of £ —— at the least [with the usual collision clause, and including war risks]: AND THAT every policy so effected, &c., *to be subject to security*, p. 719, *for*, "original policy," *say*, "policy hereby mortgaged:" AND THAT the mortgagor will during the continuance of this security pay all such premiums and moneys as may be payable in order to keep the sd ship, freight, passage-moneys, and earnings so insured, *power to mortgagee to pay premiums*, p. 719: AND THAT all moneys, charges, and expenses, which shall be paid or incurred by the mortgagee in respect of the sd ship, freight, or insurances on ship, freight, passage-moneys, or earnings, or other-

wise in the execution of the trusts or powers of these presents, *with interest to be repaid by mortgagor on demand, and in the meantime to be a charge*, p. 720, *on*, "the sd ship, and all the sd hereby mortgaged premises:" AND FURTHER, that the mortgagor will, during the continuance of this security, pay or allow to the mortgagee, in addition to all discounts received by him on insurance or disbursements, all usual and customary commissions and charges for business which may be performed by the mortgagee or any firm in which he may be a member on account of the mortgagor in relation to the sd ship or any shares or share therein in the same manner as if he had not been a mortgagee of the sd ship: AND THAT the mortgagor will from time to time in writing apprise the mortgagee of all or any information or intelligence which he may receive concerning the sd ship immediately on the receipt thereof: AND THE mortgagor doth hereby appoint the mortgagee to be his attorney in his name and on his behalf to demand, sue for, enforce payment of, and receive and give effectual receipts and discharges for the freight, passage-moneys, and earnings hereby mortgaged, *to prosecute and defend legal proceedings*, p. 148, *saying*, "or any other matters relating to or affecting the sd ship," *to arrange and compromise*, p. 148, *substitute for*, "or any other matters, &c.," "or any claims or matters now subsisting or hereafter arising in relation to the sd ship," AND to appoint and discharge the master, officers, and crew of the sd ship, and generally to act in and about the premises as fully and effectually to all intents and purposes as if the mortgagee had been the absolute owner of all the sd mortgaged premises, *to appoint substitutes*, p. 149, *ratification*, p. 150: PROVIDED ALWAYS, and it is hereby agreed, that it shall be lawful for the mortgagee or any person or persons authorised by him, at any time after the —— day of ——, without any further consent of the mortgagor, to enter upon and take possession of the sd ship whether at sea or in port, and whether abroad or at home, and to navigate the sd ship, and also to detain her at any port

That mortgagor will pay mortgagee's business charges.

To give information.

Power of attorney.

Power to mortgagee to take possession.

PREC. XL.

To sell.

where she may be, and also to remove her from any port to any other port for sale, AND ALSO to sell all or any of the sd premises hereby mortgaged, either together or separately, and either together with the sd ship or any share or shares thereof, *continue*, p. 711 *form* V.; *in the clause as to events in which power is to be exercised, say*, "neither the power of sale herein contained nor the statutory power of sale of the sd ship shall be, &c.;" *in the clause as to application of purchase moneys, say*, "out of the purchase moneys on any sale, whether under the power herein contained or the sd statutory power, and out of the moneys (if any) received by him in respect of the said freight, passage-moneys, earnings, policies, and premises hereby mortgaged;" *Receipt clause*, p. 718, *as to*, "any moneys paid to the mortgagee in respect of any of the sd mortgaged premises:"

Mortgagee's indemnity clause.

PROVIDED ALWAYS that the mortgagee shall not be answerable for any involuntary losses which may happen in or about the exercise or execution of the powers of sale or any other powers or trusts arising under the Merchant Shipping Acts or these presents;

Covenants for title.

Covenants, p. 734, *mutatis mutandis, for right to assign*, "the sd ship with the appurtenances and the premises hereby mortgaged," *for quiet enjoyment, saying*, "enter into and take possession of the sd ship and premises, and the same thenceforth to use, navigate, and enjoy, and to receive and take the freight, passage-moneys, and earnings thereof without, &c.," *free from incumbrances, and for further assurance of*, "the sd ship with the appurtenances and the freight, passage-moneys, and earnings thereof, and also the sd policies and all moneys to become payable thereunder."

IN WITNESS, &c.

XLI.

AGREEMENT *to accompany* STATUTORY MORTGAGE *of a* SHIP. VARIATIONS *where* MORTGAGOR *and* MORTGAGEE *are* FIRMS. *Short form.* PREC. XLI.

AGREEMENT made the —— day of ——, BETWEEN A. (hereinafter called the mortgagor (*a*)) of the one part, and B. (hereinafter called the mortgagee (*a*)) of the other part: WHAS by a mortgage in the statutory form bearing even date herewith 64 64ths of the —— of—— have been transferred by the mortgagor to the mortgagee by way of mortgage to secure the general balance of the account current of the mortgagor with the mortgagee: AND WHAS, for further securing the payment of the sd general balance of account current, the parties have agreed to enter into this agreement: NOW IT IS HEREBY AGREED AS FOLLOWS:— Parties. Recitals. Statutory mortgage. Agreement.

I. THE MORTGAGEE may at any time at his discretion (if he shall deem it necessary so to do for better security, and although no moneys may be immediately due or payable to him by the mortgagor) enter into and retain the possession of the sd ship, and employ the same in any trade or for any voyage or voyages either as a general ship or on hire or charter, and demand and receive the freight and earnings thereof, and his receipt shall be a good and valid discharge for the same. Power to mortgagee to take possession.

II. SO LONG as any money shall remain due to the mortgagee the sd ship shall not proceed on any voyage or voyages without his consent in writing first obtained, and (if he think fit to exercise this power) he shall have the nomination of the master of the sd ship, and the mortgagor undertakes from time to time to remove any master of whom the mortgagee As to voyages and nomination of master.

(*a*) Where the parties are firms, say "mortgagors" and "mortgagees," and make consequential alterations throughout, insert clause IX, and omit clause X.

PREC. XLI.

shall not approve, and to appoint any master nominated by the mortgagee.

Money not to be called in before a day named.

III. THE MORTGAGEE undertakes not to require payment of the balance of his account current, or exercise the power which is given by the Merchant Shipping Act to sell the sd ship, until after the —— day of ——, except in case of the bankruptcy, or suspension of payment of or by the mortgagor, or his compounding or arranging with his creditors, or of the breach by him of any of the clauses herein contained, and for the purposes of this clause the dishonour of any bill of exchange accepted by the mortgagor shall be deemed to be a suspension of payment by him.

As to demand of payment.

IV. IN CASE any of the events mentioned in the last preceding clause shall happen, and the mortgagee shall think fit to require payment of the balance of his account current, a demand of payment shall be deemed to be sufficiently made, if in writing addressed to the mortgagor, and served on him personally, or left for him at his last-known place of business in ——.

Mortgagee may buy in at sale.

V. THE MORTGAGEE shall have power to buy in at any auction, and to rescind any contract for sale without being responsible for any loss.

Mortgagor to insure.

VI. THE MORTGAGOR will at all times during the continuance of this security insure and keep insured the sd ship and her freight (with the usual collision clause, and including war risks) in the sum of £ —— at the least, and with such insurance offices or underwriters as the mortgagee shall require, and will from time to time deliver the original stamped policies duly endorsed to the mortgagee; and in case of default either in insuring or keeping insured, or in delivering the stamped policies duly endorsed as aforesd, it shall be lawful for (but not obligatory on) the mortgagee to insure and keep insured the sd ship and her freight, or either ship or freight, in such amounts as he shall think proper, and in case of the loss of, or damage to, the sd ship, the mortgagee shall have power to recover and receive all insurance moneys, and give good and valid discharges for the

same, and to compromise claims or to refer the same to arbitration as he in his discretion shall think proper. PREC. XLI.

VII. ALL BILLS of exchange, whether current or overdue, bearing the name of the mortgagor and held by the mortgagee, commission as agreed upon, and all charges and expenses which the mortgagee may incur or pay by reason of the dishonour or renewal of any bill of exchange, and also all expenses incident to the insurance or the taking and keeping possession or the sale of the sd ship, together with interest at the rate from time to time agreed upon on all amounts paid or advanced by the mortgagee, shall form items in the account current between the parties, and be secured by the sd statutory mortgage and these presents, and the sd ship shall not be redeemed or redeemable until full payment or satisfaction of the same. As to matters to be included in account current.

VIII. THE MORTGAGOR will, on request, execute and do any further assurance or act for more effectually assigning and making over the sd ship and her freight and earnings, and all policies thereon, to the mortgagee, which may be reasonably required. Mortgagor to execute further assurances.

IX. [THE SECURITY made by the sd statutory mortgage and these presents shall not be affected by reason of any change in the person or persons constituting the firm of —— or ——, either by the death or retirement of any partner, or the accession of any new partner]. Proviso for change in firm.

X. [*Interpretation clause*, p. 730].

IN WITNESS, &c.

XLII.

SUB-MORTGAGE *of* FREEHOLDS *and* LEASEHOLDS *by way of* COLLATERAL SECURITY. PREC. XLII.

Parties, A., *mortgagor*, 1; B., *mortgagee*, 2: *Recite the lease*, p. 235, *and devolution thereof* (*if any*) *to the original* Recitals.

PREC. XLII.

mortgagor, p. 236, *as in a conveyance on sale; The mortgage to the present mortgagor*, p. 692, *setting out the covenants for payment of principal and interest, the conveyance of the freeholds and leaseholds, and proviso for redemption, and noticing the power of sale and any proviso, such as a proviso for the reduction of interest on punctual payment, relating to the terms of repayment of the loan; State of mortgage debt*, p. 694; *The principal security for the present loan, bearing even date, and containing covenant for payment of principal and interest:* AND WHAS upon the treaty for the sd loan of the sd sum of £—— secured by the sd recited indre of even date herewith, it was agreed that the payment thereof, together with the interest thereon as aforesd, should be further secured in manner hereinafter appearing: NOW THIS INDRE WITNESSETH that in pursuance of the recited agreement and in consideration of the sum of £—— so advanced by the sd B. to the sd A. as aforesd, the sd A. doth hereby assign unto the sd B., his exors, admors, and assigns, ALL THAT the sd principal sum of £—— so owing as aforesd to the sd A. upon the security of the hereinbefore recited indre of the —— day of ——, and all interest now due and henceforth to become due for the same, AND the benefit of the power of sale and all powers and provisions contained in the sd last mentioned indre, AND all other securities for the same principal sum and interest, *Estate clause*, p. 264, *Power of attorney*, p. 717, TO HAVE AND TO HOLD the sd principal sum, interest, and premises, hereinbefore expressed to be hereby assigned UNTO the sd B., his exors, admors, and assigns, subject to the proviso for redemption hereinafter contained: AND THIS INDRE ALSO WITNESSETH that in pursuance of the sd agreement, and for the consideration aforesd, the sd A. doth hereby grant unto the sd B., his heirs and assigns, ALL AND SINGULAR, the sd hereditaments and premises comprised in and expressed to be granted by the sd hereinbefore recited indre of the —— day of ——, with the appurtenances thereof; *Estate clause*, p. 264, TO HAVE AND TO HOLD the sd

Agreement.

Witnesseth.

Assignment.

Mortgage debt.

Habendum.

To mortgagee.

Further witnesseth.

Grant.

Freehold parcels.

Habendum.

hereditaments and premises hereinbefore expressed to be hereby granted UNTO AND TO THE USE of the sd B., his heirs and assigns, subject to such right or equity of redemption as the same premises are now subject to by virtue of the hereinbefore recited indre of the —— day of ——, and subject to the proviso for redemption hereinafter contained: AND THIS INDRE ALSO WITNESSETH that in further pursuance of the sd agreement and for the consideration aforesd, the sd A. doth hereby assign unto the sd B., his exors, admors, and assigns, ALL AND SINGULAR the sd hereditaments and premises comprised in and expressed to be demised by the hereinbefore recited indre of the —— day of —— [with the benefit of the trust declared in favour of the sd A. by the sd indre of mortgage of the sd nominal reversion thereby reserved], *Estate clause*, p. 264, TO HAVE AND TO HOLD the sd hereditaments and premises lastly hereinbefore expressed to be hereby assigned UNTO the sd B., his exors, admors, and assigns, for the residue now to come and unexpired of the sd term of —— years [less one day], granted by the sd recited indre of the —— day of —— [and for all the estate and interest of the sd A. in the sd nominal reversion], subject to such right or equity of redemption as the same premises are now subject to by virtue of the sd last mentioned indre, and subject to the proviso for redemption hereinafter contained, *Proviso for redemption, form* III., p. 702, *saying*, "reassign and reconvey the sd mortgage debt and interest and freehold and leasehold premises hereinbefore expressed to be hereby assigned and granted respectively to the sd A., his heirs, exors, admors, and assigns, respectively, subject nevertheless as to the sd freehold and leasehold premises to such right or equity of redemption as shall be subsisting therein respectively by virtue of the hereinbefore recited indre of the —— day of ——;" *Trusts of moneys to be received under original mortgage*, p. 717, *saying*, "shall receive any moneys in or towards satisfaction of the sd principal sum of £——, *the original mortgage debt*, or any

To use of mortgagee.

Further witnesseth.

Assignment.

Leasehold parcels.

Habendum.

To mortgagee.

Proviso for redemption.

Trusts of moneys to be received.

PREC. XLII.

interest thereon, whether on any sale under the power of sale contained in the hereinbefore recited indre of the —— day of —— or otherwise, he or they shall by and out of the same," &c.; PROVIDED ALWAYS that the receipt of the sd B., his exors, admors, or assigns, for the sd principal sum of £——, *the original mortgage debt*, and interest or any part thereof, or for the purchase money of the premises sold on any exercise of the power of sale contained in the hereinbefore recited indre of the —— day of ——, or any part thereof respectively, shall effectually discharge the person or persons paying such moneys from the same, *continue receipt clause*, p. 718: PROVIDED ALWAYS, and it is hereby agreed and declared that it shall not be incumbent on the sd B., his exors, admors, or assigns, to enforce or realise the sd hereinbefore recited security, or to take any steps or proceedings for that purpose unless he or they shall think fit, and he or they shall not be answerable or responsible for any loss occasioned by any delay or omission in any such respect, *Power of sale*, p. 711, *and ancillary clauses, the property to be sold being described as* "the sd mortgage debt hereinbefore expressed to be hereby assigned, or so much thereof as shall remain owing, with all interest then owing or to become owing thereon, together with the securities for the same, or, so far as the same are separable, any of the same premises or any part or parts thereof," *Mortgagee's indemnity clause*, p. 729; *Covenants by A. for* "power to assign and grant the sd mortgage debt, hereditaments and premises, hereinbefore expressed to be assigned and granted respectively, in manner aforesd, free from incumbrances," *and for further assurance*, p. 739.

Mortgagee's receipt clause.

Proviso that mortgagee need not realise.

Power of sale.

Covenants for title.

IN WITNESS, &c. (*a*)

(*a*) Notice should be given to the original mortgagor.

XLIII.

MORTGAGE *of* RENEWED LEASE *by reference to and endorsement on a* PRIOR MORTGAGE *of the* SURRENDERED LEASE. PREC. XLIII.

THIS INDRE made, &c., BETWEEN the within named A. (hereinafter called the mortgagor) of the one part, and the within named B. and C. (hereinafter called the mortgagees) of the other part: WHAS by an indre bearing even date with and executed before these presents, endorsed on the within recited indre of lease of the —— day of ——, and expressed to be made between, &c., the sd lease of the —— day of —— has been surrendered to the sd X., in whom the reversion of the premises comprised in the sd lease is now vested: AND WHAS by another indre also bearing even date with and executed before these presents, and made between the sd X. of the one part and the mortgagor of the other part, the messuage or tenement and premises comprised in the sd surrendered lease have been demised by the sd X. to the mortgagor, his exors, admors, and assigns, for the term of —— years from the —— day of ——, at the yearly rent of £——, and subject to the covenants on the part of the lessee and conditions therein contained: AND WHAS the mortgagees concurred in the surrender of the sd lease of the —— day of —— at the request of the mortgagor, upon an agreement that the renewed lease to be granted as aforesd should be assigned to the mortgagees by way of security for the principal moneys owing to them under the within written indre, and the interest thereof, in substitution for the sd surrendered lease in manner hereinafter appearing: AND WHAS the principal sum of £—— is now owing to the mortgagees on the security of the within written indre, with interest thereon from the —— day of —— last: NOW THIS INDRE WITNESSETH that in consideration of the mortgagees having made such surrender at the request

Parties. Recitals. Surrender. New lease. Agreement. State of mortgage debt. Witnesseth.

PREC. XLIII.

Assignment.

Parcels.

General words.

Habendum to mortgagees as substituted security.

of the mortgagor as aforesd, and of the premises, the mortgagor doth hereby assign unto the mortgagees, their exors, admors, and assigns, ALL AND SINGULAR the sd messuage or tenement and premises comprised in or expressed to be demised by the hereinbefore recited indre of lease bearing even date with these presents, TOGETHER WITH the rights, easements, and appurtenances thereto belonging, *Estate clause*, p. 264: TO HAVE AND TO HOLD the sd premises hereinbefore expressed to be hereby assigned UNTO the mortgagees, their exors, admors, and assigns, for the sd term of —— years expressed to be granted by the hereinbefore recited indre of lease of even date herewith, subject to the like equity of redemption on payment of the principal moneys and interest owing on the security of the within written indre, and with the like power of sale and other powers and provisions for securing and obtaining payment of the sd principal moneys and interest, and with the benefit of the like covenants on the part of the mortgagor, and subject to the like provisions in all respects as are in the within written indre expressed and contained concerning the premises in the within recited indre of lease comprised, and by the within written indre expressed to be assigned to the mortgagees, their exors, admors, and assigns, to the intent that the sd renewed lease of the sd premises may become in all respects substituted for the sd surrendered lease thereof as a security for the payment of the sd sum of £—— and interest.

IN WITNESS, &c.

XLIV.

DEED *of* FURTHER CHARGE (*a*) *of* FREEHOLDS, COPYHOLDS, *and* LEASEHOLDS. VARIATIONS *for* SEVERAL MORTGAGEES *and for* ENDORSEMENT *on the original mortgage.* PREC. XLIV.

Parties, A., *mortgagor*, 1; B., [C., and D.,] *mortgagees*, 2. [*Recite lease*, p. 235; *mortgage, setting out the covenant for payment of principal and interest, the conveyance and the proviso for redemption*, p. 692, and in the indre now in recital was contained a proviso for reducing the rate of interest on the sd sum of £—— to the rate of £—— per cent. per annum on punctual payment, and the usual power of sale and other provisions for further securing the payment of the sd principal sum and interest]; *Conditional surrender of copyholds*, p. 694; *State of mortgage debt*, p. 694: AND WHAS the sd B. has [B., C., and D. have] agreed to lend to the sd A. the further sum of £—— [out of moneys belonging to them on a joint account] upon having the repayment thereof with interest secured in manner hereinafter appearing: NOW THIS INDRE WITNESSETH, that in pursuance, &c., and in consideration, *of the fresh advance*, p. 695, *covenant for payment of the sum now advanced*, p. 696, *on the next half-yearly day for payment of interest on original mortgage; and interest after default*, p. 696: AND THIS INDRE ALSO WITNESSETH that in pursuance, &c., and for the consideration aforesd, it is hereby agreed and declared that ALL AND SINGULAR the —— and premises by the hereinbefore recited [within written] indre expressed to be mortgaged, WITH their several rights, easements, and appurtenances, SHALL be and remain a security for and stand charged with the pay-

Recitals.
Mortgage.
Agreement.
Witnesseth.
Covenant for payment.
Further witnesseth.
Agreement.
Parcels.
To be a security for further advance.

(*a*) As to deeds of further charge see Davidson, Prec., vol. ii., 3rd edit., 1280; Elphinstone, Introd. Conv., 186.

PREC. XLIV.

ment to the sd B., his exors, admors, and assigns, [B., C., and D., or the survivors or survivor of them, or the exors or admors of such survivor, their or his assigns] of as well the sd sum of £——, *the original mortgage debt*, and all interest due and to grow due for the same, as the sd sum of £——, *the new advance*, and the interest thereon according to the covenant hereinbefore contained in that behalf, and shall not in anywise be redeemed or redeemable until payment to him or them [them or him] of both the sd sums of £—— and £—— and the interest thereon respectively:

Covenant to surrender copyholds.

Covenant by A. with "B. his [B., C., and D., their] exors, admors, and assigns," *to surrender copyholds*, p. 298, "at the cost of the sd A., his heirs, exors, or admors," *subject to a condition for making void the surrender on payment of the new advance with interest from the date of the present deed*, p. 702; *Declaration of trust of copyholds till surrender*, p. 712: AND IT IS HEREBY further agreed and declared, that the provision in the hereinbefore recited [within written] indre contained for reducing the interest on the sd [within-mentioned] sum of £—— to the rate of £—— per cent. per annum shall extend and be considered to apply to the principal moneys and interest intended to be secured by these presents in the same manner as if the same provisions were herein repeated and set forth with respect to the sd sum of £——, *the new advance*, and the interest thereon: AND FURTHER that the power of sale in the hereinbefore recited [within written] indre contained, and all trusts, powers, and provisions ancillary thereto, and all other powers and provisions therein contained for securing payment of the sd sum of £——, and the interest thereon, shall extend and be applicable so as to be a further security for the sd sum of £——, *the new advance*, and interest as if the sd sum of £—— had formed part of the principal money secured by the hereinbefore recited [within-written] indre; [AND FURTHER that the attornment clause in the same indre contained shall henceforth be read and take effect as if a yearly rent of £—— in lieu of £—— were thereby made payable by the

Proviso for reduction of interest to extend to new advance.

Powers in mortgage deed to extend to further advance.

Attornment clause in mortgage to extend to further advance.

sd A. to the sd B., his [B., C., and D., their] heirs, exors, admors, and assigns]; [*Declaration that further advance belongs to mortgagees on joint account*, p. 716].

PREC. XLIV.

In witness, &c.

XLV.

DEED *of* Further Charge *of* Freeholds, Copyholds, *and* Leaseholds, *the original* Mortgage *having been* Transferred, *the rate of* Interest *and half-yearly days of* Payment *being* Altered, *and* Additional Freeholds *being added to the security* (*a*).

PREC. XLV.

Parties, A., *mortgagor*, 1; B., *mortgagee*, 2. *Recite lease, mortgage, and conditional surrender of copyholds, as in last Precedent; Transfer to B., see* p. 235; *Conditional surrender to B. on the occasion of the transfer*, p. 694; *State of mortgage debt*, p. 694; *Title of A. to additional freeholds*, p. 230: And whas the sd B. has agreed to lend to the sd A. the further sum of £——: And whas upon the treaty for the sd loan it was agreed that the sd sum of £—— now due on the security of the hereinbefore recited indre and the sd sum of £——, *the new advance*, should be consolidated into one principal sum of £——, and that the payment thereof with interest on the aggregate sum at the rate of £—— per cent. per annum in lieu of the hereinbefore mentioned rate of £—— per cent. per annum should be secured in manner hereinafter appearing: NOW THIS INDRE WITNESSETH that in pursuance, &c., and in consideration of the sum of £—— now owing by the sd A. to the sd B. upon the security of the hereinbefore recited indre as aforesd, and of the further sum of £—— now advanced by the sd B. to the sd A., the receipt whereof is hereby acknowledged, *Covenant for payment of aggregate debt with interest at new rate*, p. 696, *and for payment of interest at new rate after default*, p. 696: AND THIS INDRE ALSO

Recitals.

Agreement.

Consolidation of original and new advance.

Witnesseth.

Covenant for payment.

Further witnesseth.

(*a*) For variations for an endorsed deed, see the last Precedent.

PREC. XLV.

Agreement.

WITNESSETH that in pursuance, &c., and for the consideration aforesd it is hereby agreed and declared that ALL AND SINGULAR the freehold and leasehold hereditaments and premises mortgaged by the hereinbefore recited indre of, &c., *the mortgage*, and which were by the hereinbefore recited indre of, &c., *the transfer*, granted and assigned to the sd B., his heirs, exors, admors, and assigns respectively, SHALL henceforth be discharged from the equity of redemption subsisting therein by virtue of the same indres, or either of them, but shall be subject to the proviso for redemption hereinafter contained: AND THIS INDRE ALSO WITNESSETH that in further pursuance, &c., and for the consideration aforesd the sd A., *grant by A. of new freeholds to B. in fee, subject to redemption*, p. 751; *Proviso for redemption*, p. 702, *of*, "all such parts of the —— hereditaments and premises comprised in the hereinbefore recited indres as are of freehold tenure, and the hereditaments hereinbefore described and expressed to be hereby granted," *and* "of all such, &c., as are of leasehold tenure," *on payment of the consolidated loan with interest:* AND THIS INDRE ALSO WITNESSETH, *Covenant by A. with B., his exors, admors, and assigns, to surrender copyholds at the cost of A. to the use of B.*, p. 298, "discharged from the sd conditional surrender of the —— day of ——, but subject to a condition for making void the surrender to be made pursuant to this covenant corresponding to the proviso for redemption hereinbefore contained." AND IT IS HEREBY agreed and declared that the power of sale in the sd indre of mortgage contained for securing the sd principal sum of £——, *the original loan*, and the interest thereon, and all trusts, powers, and provisions ancillary thereto, and all other powers and provisions therein contained, for securing payment of the sd sum of £——, *the original debt*, and the interest thereon, shall extend to and be applicable so as to be a security for the sd total principal sum of £——, *the aggregate debt*, and the interest for the same at the rate of £—— per cent. per annum in like manner as if such power of sale and the trusts, powers, and provisions ancillary thereto, and other powers and

Parcels.

To be subject to new proviso for redemption.

Further witnesseth.

Grant of new freeholds.

Proviso for redemption.

Further witnesseth.

Covenant to surrender copyholds.

Agreement that powers in original mortgage shall extend to new advance.

provisions, were herein repeated with such alterations only as would be necessary in consequence of the transfer of the sd mortgage debt of £——, *the original debt*, and interest and the securities for the same to the sd B., and of the consequent substitution of the sd B. for the sd K., *the original mortgagee*, and in consequence of the change in the amount of the principal sum secured, and of the rate of interest payable thereon, and in the respective days appointed for payment of such principal sum and interest; AND FURTHER that such power of sale and the trusts, powers, and provisions ancillary thereto with such alterations as aforesd shall extend and apply to the hereditaments and premises hereinbefore expressed to be hereby granted in the same manner in all respects, as if the same power of sale, trusts, powers, and provisions as so altered had been inserted in these presents with respect to the last-mentioned hereditaments and premises (*b*); [AND FURTHER THAT the covenants and provisions in reference to the insurance of the mortgaged premises against fire and the attornment clause in the sd indre of mortgage contained shall extend and be applicable to the hereditaments and premises hereinbefore expressed to be hereby granted in the same manner in all respects, as if the same had been herein repeated with respect to all the hereditaments and premises mortgaged by the sd indre of mortgage and these presents respectively, with such alterations as may be necessary as aforesd, and with the substitution of the sum of £—— in lieu of £—— as the amount of the sd insurance, and so that the sd attornment clause shall henceforth be read, &c., *as in Precedent* XLIV.] (*c*); *Mortgagee's indemnity clause*, p. 729; *Covenants by A. for title to the additional freeholds*, p. 730.

Power of sale in mortgage to extend to new freeholds.

Insurance and attornment clauses in mortgage to extend to new freeholds.

IN WITNESS, &c.

(*b*) Although this creation of a power of sale by reference to the original mortgage shortens the present deed, it is of doubtful advantage, as it makes the former deed a title deed to the property added as security. If it is desired to avoid this, the power of sale must be inserted at length. Any provisions specially appropriate to the additional property should be added as in an original mortgage.

(*c*) If the transfer gave any new powers, the above clauses should of course be modified so as to extend to such powers.

XLVI.

PREC. XLVI.

DEED *of* FURTHER CHARGE *to a* BUILDING SOCIETY *incorporated under the Building Societies Act*, 1874 (*d*).

Parties, A., a member of the —— Building Society, incorporated under the Building Societies Act, 1874 (hereinafter called the mortgagor), 1; The sd Building Society (hereinafter called the Society), 2: WITNESSETH that in consideration of the further sum of £—— now advanced by the Society to the mortgagor, making up together with the sum of £—— already advanced to him by the Society, and secured by a certain indre of mortgage from him to the Society, dated, &c., the amount to which he is entitled according to the rules of the Society in respect of —— shares held by him in the Society (the receipt of which sum of £—— is hereby acknowledged), the mortgagor hereby covenants with the Society THAT he, the mortgagor, will pay to the Society according to the rules thereof the sum of £—— per [month], *continue covenants by mortgagor for payment of instalments and fines*, p. 797: AND IT IS HEREBY agreed that all the hereditaments described and comprised in the sd indre of mortgage of, &c., shall be a security for and stand charged with the payment to the Society of as well the moneys, fines, and fees payable in respect of the sd original advance of £—— secured by the sd indre of mortgage, as of the moneys, fines, and fees payable in respect of the sd further advance of £——, and shall not be redeemed or redeemable until payment of the whole of the sd moneys, fines, and fees, according to the covenants in the sd indre of mortgage and these presents contained: AND THAT all the powers, trusts, covenants, and provisions in the sd indre of mortgage contained for better securing the payment of the moneys, fines, and fees thereby secured or otherwise relating thereto, shall extend and be applicable to secure the

Witnesseth.

Covenant to pay by instalments.

Agreement that hereditaments shall be charged with further advance.

Powers in mortgage to extend to further advance.

(*d*) See Precedent XXX., and the notes thereto.

payment of the moneys, fines, and fees hereby covenanted to be paid, in the same manner mutatis mutandis and as nearly as circumstances will admit as if such powers, trusts, covenants, and provisions had been herein repeated with reference to all the moneys, fines, and fees intended to be secured by the sd indre of mortgage and these presents respectively: [AND THAT the attornment clause in the sd indre contained shall henceforth be read and take effect as if a clear [monthly] rent of £—— in lieu of £——were thereby made payable by the mortgagor to the Society in respect of the tenancy thereby created]: AND THAT the expressions "the mortgagor" and "the Society" herein used shall be construed in a similar manner as the same expressions in the sd indre of mortgage.

PREC. XLVI.

Attornment clause extended to further advance.

Interpretation clause.

IN WITNESS, &c.

XLVII.

DEED *of* FURTHER CHARGE *by* ENDORSEMENT *on a mortgage of a* LIFE INTEREST *in* PERSONALTY *and* POLICIES *where a* FRESH POLICY *is added as Security.*

PREC. XLVII.

Parties, A., *mortgagor*, 1; B., *mortgagee*, 2. *Recite that new policy has been effected by A. on his own life*, p. 692; *state of mortgage debt, some interest being due*, p. 694; *Agreement for further advance*, p. 694, on having the payment of the sd sum of £——, *the further advance*, and interest at the within-mentioned rate secured, and the payment of the within-mentioned sum of £——, and the interest now due and henceforth to become due for the same, further secured in manner hereinafter appearing. *First testatum as in Precedent* XLIV: AND THIS INDRE ALSO WITNESSETH that in pursuance, &c., and for the consideration aforesd, and also in consideration of the sd sum of £——, *the old debt*, being owing by the sd A. to the sd B. as aforesd, *continue assign-*

Recitals.

Agreement.

Further witnesseth.

Assignment.

PREC. XLVII.

ment by A. of new policy subject to redemption, as in Prec. XXI. *Proviso for redemption*, p. 702, " on payment of the sd sum of £——, *the old debt*, with interest thereon from the —— day of —— at the rate aforesd, and of the sum of £——, *the fresh advance*, with interest thereon from the date of these presents at the rate aforesd : " AND IT IS HEREBY agreed and declared that ALL AND SINGULAR the dividends, interest, and income, policies, moneys, and premises by the within-written indre expressed to be assigned, and also any new policy or policies which may be effected according to the provisions contained in the within-written indre shall be and remain a security for, and stand charged, &c., *continue clause charging further advance, as in Prec.* XLIV. : AND IT IS HEREBY further agreed and declared, that all the covenants, trusts, and provisions contained in the within-written indre in reference to the policies thereby mortgaged, or any substituted policies or policy, or to any moneys which may be received under or by virtue of the same, and also the power of sale therein contained, and the trusts, powers, and provisions ancillary thereto, and all other powers and provisions therein contained for securing payment of the sd sum of £——, *the original debt*, and the interest thereon, shall extend and be applicable, so as to be a security for the sd sum of £——, *the new advance*, and the interest thereon, as well as the within-mentioned sum of £—— and the interest thereon, in the same manner in all respects as if the same covenants, trusts, powers, and provisions were herein repeated with such alterations as would be necessary in consequence of the change of the principal amount intended to be secured : AND FURTHER that the power of sale and all the covenants, trusts, powers, and provisions contained in the within-written indre in relation to the sd policies thereby mortgaged, or any substituted policies or policy, or the moneys to be received by virtue thereof, shall extend and be applicable to the sd policy hereby mortgaged, or any substituted policy or policies, and the moneys which may be received by virtue thereof in the same manner in all

Proviso for redemption.

Agreement.

That property comprised in original mortgage shall be charged with fresh advance.

Provisions in mortgage to extend to fresh advance.

And to new policy.

respects as if the same power of sale, covenants, trusts, powers, and provisions, altered as aforesd, had been inserted in these presents with respect to the policy hereby mortgaged, and any substituted policy or policies, and the moneys to be received by virtue thereof (*d*). *Mortgagee's indemnity clause*, p. 729. PREC. XLVII.

In witness, &c.

XLVIII.

MEMORANDUM *of* Further Charge *by* Endorsement *on the Mortgage. Applicable to any kind of Property. A Short Form.* PREC. XLVIII.

I, the within named A., *mortgagor*, do hereby charge the within mortgaged —— and premises with the payment of the further sum of £——, this day advanced to me by the within named B., *mortgagee*, with interest thereon, at the rate of £—— per cent. per annum, payable on the —— day of —— and —— day of ——: And I declare [that the provision in the within written indre contained for the reduction of interest on punctual payment, shall extend to the interest on the sd further advance : And further] that, *powers in mortgage deed to extend to further advance*, p. 850.

As witness my hand this —— day of ——.

XLIX.

Transfer *of* Mortgage *of* Freeholds, Leaseholds, *and* Copyholds, *where the* Mortgagor *is* Not *a* Party. Variations *where* No Surrender *has been made of the Copyholds, and for the case of the* PREC. XLIX.

(*d*) See p. 853, note (*b*). Notice of this deed must be given to the trustees of the life interest and to all the offices. See p. 421, note.

PREC. XLIX.

MORTGAGEE *being* DEAD, *and where the original* MORTGAGE *was made to* TRUSTEES (*a*).

Recitals.

Parties, A. [and B.], *mortgagees*, 1; C. [D., and E.], *transferees*, 2. *Recite* (*b*) *lease*, p. 235; *Mortgage*, p. 692, *stating the covenant for payment, the provision, if any, for reduction of interest on punctual payment, and for continuance of loan for a time certain* [*if the mortgage was to several one of whom has died, the joint account clause*], *the grant of the freeholds and demise or assignment of the leaseholds, the proviso for redemption, the declaration of trust, if any, of the nominal reversion of the leaseholds, the covenant to surrender the copyholds, and the declaration of trust, if any, till surrender, setting out all the parcels at length*; [*Admission, if any, of the mortgagee*, p. 233, *adding the words*, "saving the right of any persons having an equity of redemption in the sd hereditaments and premises"]; *Present state of mortgage debt, some interest being due*, p. 694; *Agreement for the transfer*,

(*a*) As to transfers of mortgages, see Davidson's Prec., vol. ii., part ii., p. 1292, *et seq.*, 3rd ed., Elphinstone's Introd. Conv., p. 173, *et seq.* If the mortgagee be dead, his heir or devisee will be a party of the 1st part, and his personal representatives of the 2nd part. After the recital of the mortgage recite the will of the mortgagee setting out devise (if any) of mortgaged estates, and appointment of exors, his death, and the probate, or recite his death intestate, the grant of administration, and the heirship, and that the heir or devisee has "agreed at the request of the sd exors [*or*, admors] to join in these presents in manner hereinafter appearing." The heir or devisee will grant the freeholds and covenant to surrender the copyholds at the request of the exors or admors, and will join in the covenant against incumbrances, the 4th section of the Vendor and Purchaser Act, 1874, 37 & 38 Vic., c. 78, being considered to apply to reconveyances on redemption only, and not to transfers, and it being moreover, as it is conceived, clear that that enactment does not disable the heir from conveying. If there has been no surrender of the copyholds, the personal representatives, together with the heir if the covenant has been entered into with him, must assign the benefit of the covenant. The personal representatives will assign the leaseholds.

(*b*) If the transfer is endorsed on the mortgage, omit the recitals of the lease and mortgage, and refer to the lease as the "within recited indre of lease," to the mortgage as "the within written indre," and make other consequential alterations.

PREC. XLIX.

p. 695, *form* XIV., *where the money advanced belongs to the transferees on a joint account, say,* " the sd sum of £—— out of moneys belonging to them on a joint account." NOW THIS INDRE WITNESSETH that in pursuance of the sd agreement, *consideration,* p. 695, *the amount being the total sum due for principal and interest on the mortgage,* the sd A. doth [A. and B. do] hereby assign unto the sd C., his [C., D., and E., their] exors, admors, and assigns ALL THAT the sd principal sum of £—— secured by the hereinbefore recited indre as aforesd, and the interest now due, and henceforth to become due, on the same, and the benefit of all securities for the same ; *Estate clause,* p. 264 (*c*) : TO HAVE AND TO HOLD the sd principal money, interest, and premises, hereinbefore expressed to be hereby assigned UNTO the sd C., his [C., D., and E., their] exors, admors, and assigns, for [his and] their own use and benefit: AND THIS INDRE ALSO WITNESSETH that in further pursuance of the recited agreement, and for the consideration aforesd, the sd A. doth [A. and B. do] hereby grant unto the sd C., his [C., D., and E., their] heirs and assigns, ALL AND SINGULAR the freehold hereditaments and premises expressed to be granted or assured by the hereinbefore recited indre of mortgage of the —— day of ——, or which are now by any means vested in the sd A. [and B.] subject to redemption by virtue of the same indre, with the appurtenances thereof; *Estate clause,* p. 264 : TO HAVE AND TO HOLD the sd —— hereditaments and premises hereinbefore expressed to be hereby granted UNTO the sd C., his [C., D., and E., their] heirs and assigns, TO THE USE of the sd C., his [C., D., and E., their] heirs and assigns for ever, SUBJECT to such right or equity of redemption as the same premises are now subject to by virtue of the hereinbefore recited indre of mortgage on payment to the sd C., his exors, admors, or assigns [C., D., and E., or the survivors or survivor of them,

Witnesseth.

Assignment.

Mortgage debt.

Habendum.

To transferees.

Further witnesseth.

Grant.

Freeholds.

Habendum.

To use of transferees.

Subject to proviso for redemption.

(*c*) As to the omission of the power of attorney, see p. 265, note. If there is any doubt as to the possibility of immediately giving notice to the mortgagor, the power of attorney should be inserted.

PREC. XLIX.

or the exors or admors of such survivor, their or his assigns] of the sd sum of £——, *the principal*, and the interest now

Further witnesseth.

due and henceforth to become due for the same: AND THIS INDRE ALSO WITNESSETH that in further pursuance of the recited agreement and for the consideration

Assignment.

aforesd, the sd A. doth [A. and B. do] hereby assign to the sd C., his [C., D., and E., their] exors, admors, and assigns,

Leaseholds.

ALL AND SINGULAR the leasehold hereditaments and premises expressed to be demised [assigned] by or which are now by any means vested in the sd A. [and B.] subject to redemption by virtue of the hereinbefore recited indre of mortgage of the —— day of ——, with the appurtenances thereof [*if the mortgage contains a declaration of trust of the nominal reversion, add*, and with the benefit of the trust declared in favour of the sd A. [and B.] by the sd indre of mortgage of the sd nominal reversion[s] thereby reserved of the sd term [respective terms] created by the sd indre [respective

Habendum.

indres] of lease;] *Estate clause*, p. 264; TO HAVE AND TO HOLD the sd hereditaments and premises lastly hereinbefore

To transferees.

expressed to be hereby assigned UNTO the sd C., his [C., D., and E., their] exors, admors, and assigns, for the residue of the sd term [several terms] for which the same premises were [respectively] demised [assigned] by the hereinbefore recited indre of mortgage [and for all the estate and interest of the sd A. [and B.] in the sd nominal reversion[s] reserved by the same indre of the sd term [respective terms] created by the sd indre [respective indres] of lease] subject to such

Further witnesseth.

right or equity of redemption, *&c., as above:* AND THIS INDRE ALSO WITNESSETH that in further pursuance of the recited agreement and for the consideration aforesd,

Covenant to surrender copyholds.

the sd A. doth [A. and B. do] hereby, &c., *covenant*, "with the sd C., his [C., D., and E., their] exors, admors, and assigns," *as in a conveyance on sale to surrender*, p. 298, "at the cost of the sd C., his [C., D., and E., their] exors, admors, or assigns," the sd copyhold or customaryhold hereditaments and premises comprised in the hereinbefore recited surrender of the —— day of ——, with the appurtenances

PREC. XLIX.

To use of transferees.

And in the meantime to hold premises in trust for transferee.

thereof, *Estate clause*, p. 264, To THE USE of the said C., his [C., D., and E., their] heirs and assigns, according to the custom, &c., subject to such right or equity of redemption, &c., *as above;* AND FURTHER, that in the meantime, and until such surrender shall be made, the sd A., his [A. and B., their] heirs and assigns, will stand seised of the sd premises in trust for the sd C., his [C., D., and E., their] heirs and assigns, subject to such right or equity of redemption as is now subsisting therein as aforesaid (*d*); [*Declaration that money belongs to C., D., and E., on a joint account*, p. 716]. *Covenant by A.* [*and B.*] *against incumbrances*, p. 740.

IN WITNESS, &c.(*e*).

(*d*) If the mortgagor's concurrence cannot be obtained, the mortgagee must be admitted on the surrender to him, and then surrender to the use of the transferee, subject to the mortgagor's equity of redemption. If the mortgagor is willing to concur, and has not incumbered the equity of redemption, the original surrender should be vacated, and a new surrender taken from the mortgagor to the transferee. Having regard to the latter alternative, a covenant that the mortgagee will obtain admittance is not inserted in the text, but is, if necessary, implied. If there has been no surrender, and the mortgagor does not concur, the following assignment of the benefit of the covenant to surrender must be substituted for the covenant to surrender—

"The sd A. doth [A. and B. do] hereby assign unto the sd C., his [C., D., and E., their] heirs and assigns, ALL AND SINGULAR the sd copyhold or customaryhold hereditaments and premises by the hereinbefore recited indre of mortgage covenanted to be surrendered, with the appurtenances thereof, *Estate clause*, p. 264, TOGETHER WITH the benefit of the sd covenant for the surrender of the sd premises, with full power to sue thereon in the name or names of the sd A., or his [A. and B., or their] exors or admors, and all other powers and means necessary for enforcing the performance of the same: To HAVE AND TO HOLD the sd hereditaments and premises lastly hereinbefore expressed to be hereby assigned UNTO the sd C., his [C., D., and E., their] heirs and assigns, subject to such right," &c., as in the text.

(*e*) Notice of the transfer must be given to the mortgagor.

L.

PREC. L.

TRANSFER *of* MORTGAGE *of* FREEHOLDS, LEASEHOLDS, *and* COPYHOLDS, *where the* MORTGAGOR *is a* PARTY *and has* NOT INCUMBERED *the equity of redemption, and where a* NEW PROVISO *for* REDEMPTION *and* NEW POWERS *are inserted* (*a*). VARIATIONS *for the case of the* MORTGAGEE *being* DEAD(*b*), *for a* MORTGAGE *to* TRUSTEES, *and where the Mortgagor receives a* FURTHER ADVANCE (*c*).

Recitals.

Parties, A., [B., and C.,] *mortgagees*, 1; D., *mortgagor*, 2; K., [L., and M.,] *transferees*, 3. *Recite the lease*, p. 235;

(*a*) Where brevity is an object, the old powers might be relied on, in which case the deed would be in the form of the next Precedent. But the usual practice is to arm the mortgagee with new powers as in an original mortgage, if it is sufficiently certain that the equity of redemption has not been incumbered.

(*b*) If the mortgagee be dead, his heir or devisee will be a party of the first part, and his personal representatives of the second part. The recitals will be the same as those indicated on p. 858, note (*a*), with the addition of a recital of the admission of his customary heir or devisee, if such has been taken. The heir or devisee will grant the freeholds at the request of the personal representatives and of the mortgagor; and if the mortgagee has been admitted, will at the like request concur in the covenant to surrender. The personal representatives will assign the leaseholds at the request of the mortgagor.

(*c*) This precedent can readily be adapted to the case of the mortgagor receiving a further advance on the occasion of the transfer. Instead of the recital of the agreement for the transfer, say, "AND WHEREAS the sd K. has [K., L., and M., have] agreed, at the request of the sd D., to pay to the sd A., [B., and C.] the sd sum of £——, and to lend to the sd D. the further sum of £—— upon having such transfer as is hereinafter contained of the sd mortgage debt of £—— and interest, and the securities for the same, and upon having the repayment of the sd sum of £——, *the further advance*, and interest secured, and of the sd sum of £——, *the original debt*, and interest further secured, in manner hereinafter appearing." In the assignment

PREC. L.

Mortgage as in the last Precedent, and noticing also, as in Precedent XLIV., *that it contains a power of sale and other provisions for securing payment of the mortgage moneys* (*d*) ; *Surrender of copyholds*, p. 694 [*and admittance*, p. 233, *form* XI., *adding at the end of the form*, "saving the rights of all persons interested in the equity of redemption of the sd premises"] ; *If D. is not the original mortgagor, recite shortly the devolution of title to the equity of redemption, or say*, "AND WHAS the equity of redemption of the sd freehold, leasehold, and copyhold premises comprised in the sd indre of mortgage is now vested in the sd D.;" *Present state of mortgage debt, all interest having been paid*, p. 694 ; *Agreement for transfer at request of D.*, p. 695 ; *And for further security*, p. 695: NOW THIS INDRE WITNESSETH that in pursuance of the recited agreement, and in consideration of the sum of £—— upon the execution of these presents paid to the sd A., [B., and C.] by the sd K., [L., and M., out of moneys belonging to them on a joint account] at the request of the sd D., *Receipt*, the sd A., [B., and C.,] at the request

Witnesseth.

of the original debt, after the words "with the benefit of the power of sale, and all other powers, remedies, and securities contained in or given by the hereinbefore recited indre of mortgage for securing or recovering the sd principal sum of £——, *the original debt*, and interest," add the words, "and so that the same shall extend and be applicable so as to be a further security for the sd sum of £——, *the further advance*, and interest, as if the sd sum of £—— had formed part of the principal money secured by the hereinbefore recited indre, and hereinbefore assigned to the sd K., his [K., L., and M., their] exors, admors, and assigns." See also Prec. LIV. The proviso for redemption and the power of sale, if any, will extend to the aggregate amount of the original debt and further advance.

(*d*) It is sometimes convenient, where the mortgagor is a party, to give the description of the parcels in the operative part as in a new mortgage. See Dav. Prec., vol. ii., p. 1298, note (*c*), 3rd ed. In that case the property will be referred to in the recital of the mortgage as "the hereditaments hereinafter expressed to be hereby granted."

PREC. L.

Assignment of mortgage debt.

And interest.

And powers.

Habendum.

To transferees.

Further witnesseth.

Covenant for payment.

Further witnesseth.

Grant of freeholds.

Habendum.

To transferees subject to new proviso for redemption.

Further witnesseth.

of the sd D., doth [do] hereby assign unto the sd K., his [K., L., and M., their] exors, admors, and assigns, ALL THAT the sd principal sum of £—— so owing to the sd A., [B., and C.,] upon the security of the hereinbefore recited indre of mortgage of, &c., as hereinbefore mentioned, AND all interest henceforth to become due for the same: AND the benefit of the power of sale and all other powers, remedies, and securities contained in or given by the sd indre of mortgage for securing or recovering the sd principal sum and interest, *Estate clause*, p. 264; TO HAVE AND TO HOLD the sd principal sum, interest, and premises hereinbefore expressed to be hereby assigned UNTO the sd K., his [K., L., and M., their] exors, admors, and assigns, for [his and] their own benefit: AND THIS INDRE ALSO WITNESSETH that in further pursuance of the recited agreement and for the consideration aforesd, *Covenant by D. with K., [L., and M.,] for payment, on the next day for payment of interest* (*e*), p. 696; *and interest after default*, p. 696: AND THIS INDRE ALSO WITNESSETH that in further pursuance, &c., and for the consideration aforesd, the sd A., [B., and C.,] at the request of the sd D., doth [do] hereby grant, and the sd D. doth hereby grant and confirm, unto the sd K., his [K., L., and M., their] heirs and assigns, *Freehold parcels by reference to the mortgage as in last Precedent, or if thought desirable, set them out at length, with the usual general words, as in an original mortgage; Estate clause*, p. 264: TO HAVE AND TO HOLD the sd hereditaments and premises hereinbefore expressed to be hereby granted UNTO the sd K., his [K., L., and M., their] heirs and assigns, TO THE USE of the sd K., his [K., L., and M., their] heirs and assigns for ever, free from all right or equity of redemption, under or by virtue of the hereinbefore recited indre of mortgage, but subject to the proviso for redemption hereinafter contained: AND THIS INDRE ALSO WITNESSETH that in further pursuance, &c., and for the consideration aforesd,

(*e*) If convenient, the days for payment of interest may be altered.

PREC. L.

Assignment of leaseholds.

the sd A., [B., and C.], at the request of the sd D., doth [do] hereby assign, and the sd D. doth hereby assign [*or if the mortgage was by demise*, demise], and confirm unto the sd K., his [K., L., and M., their] exors, admors, and assigns, *Leasehold parcels by reference to mortgage as in last Precedent, or if thought desirable by reference to lease as in original mortgage*; *Estate clause*, p. 264 [*if the mortgage was by demise omit D. from estate clause*]; *Habendum to K.*, [*L., and M.*] *as in original mortgage, free from the old and subject to new proviso for redemption as above*; *Proviso for redemption*, p. 702, *form* III.; *If the mortgage was by demise insert declaration of trust of nominal reversion of leaseholds*, p. 712: AND THIS INDRE, &c., *if there has been no surrender, or a surrender but no admittance on the mortgage, add a covenant by D., but if there has been both a surrender and admittance*, a covenant *by A.*, [*B., and C.*] *and D.* "for themselves respectively, and their respective heirs, exors, and admors," *with* "K., his [K., L., and M., their] exors, admors, and assigns," *to surrender the copyholds, described by reference to the mortgage and surrender, as in the last Precedent, or, if thought desirable, by a new description*, "at the cost of the sd D., his heirs, exors, admors, or assigns," "free and discharged from the equity of redemption now subsisting therein by virtue of the hereinbefore recited indre of mortgage and surrender, *or*, 'admittance,' but subject, &c.;" *Condition for making void the surrender*, p. 702; *Declaration of trust by D. or by A.*, [*B., and C.*], *as the case may be, till surrender*, p. 712; [*Declaration that money belongs to K., L., and M. on a joint account*, p. 716;] *Covenant for insurance and repair if appropriate*, p. 720; *Power of sale*, p. 709; *Mortgagee's indemnity clause*, p. 729: PROVIDED ALWAYS that nothing herein contained shall affect or prevent the exercise of the power of sale contained in the hereinbefore recited indre of mortgage (*f*); *Attornment by D. if in posses-*

Further witnesseth.

Covenant to surrender copyholds.

Proviso keeping alive old power of sale.

(*f*) See *Boyd* v. *Petrie*, L. R. 7 Ch. 385.

PREC. L.

sion, p. 725 ; *Covenant by A.,* [*B., and C.*] *against incumbrances,* p. 739 ; *Covenants by D. for title,* p. 736.

In witness, &c.

LI.

PREC. LI.

TRANSFER *of* Mortgage *of* Freeholds, Leaseholds, *and* Copyholds, *where the* Mortgagor *is a* Party, *and has* Incumbered *the equity of redemption, and there has been a* Previous Transfer.

Parties, A., [B., and C.], *mortgagees,* 1 ; D., *mortgagor,* 2 ;

Recitals. K., [L., and M.], *transferees,* 3. *Recite the lease,* p. 235 ; *Mortgage,* p. 692 ; *Transfer of mortgage to A.* [*B., C., and X.*] *setting out the transfer of the debt, the covenant, if any, for payment, the conveyance of the trust property, with the proviso, if any, for redemption, and noticing any new powers given, and if the transfer is to several, one of whom has since died, setting out the joint account clause ; Surrender, if any, of copyholds on the occasion of the transfer,* p. 694 ; [*Death of X.*] ; *Present state of mortgage debt, some interest being due,*

Witnesseth. p. 694 ; *Agreement for transfer,* p. 695 : NOW THIS INDRE WITNESSETH that in pursuance of the recited

Assignment of debt. agreement, *Consideration,* p. 695 ; *Assignment of mortgage debt, as in last Precedent,* p. 863, *saying,* "indres of mortgage

Further witnesseth. of, &c., and transfer of, &c., respectively" : AND THIS INDRE ALSO WITNESSETH, &c., *covenant by D. for payment of principal on next day for payment of interest, with*

Covenant for payment. *interest,* " as from the —— day of —— now last past," *i.e., the last day up to which interest was paid,* p. 696 ; *and interest*

Further witnesseth. *after default,* p. 696 : AND THIS INDRE ALSO WITNESSETH, &c., *grant by A.,* [*B., and C.*] *of freeholds and*

Grant and assignment. *assignment of leaseholds, and of A.'s* [*A., B., and C.'s*] *nominal reversion, and habendum, as in Prec.* XLIX., *except that D. will not join in the grant and assignment, which will be*

PREC. LI.

expressed to be made at his request, and except that the property will be described as that which was conveyed by the previous transfer instead of the original mortgage: AND THIS INDRE ALSO WITNESSETH, &c., the sd A. [B., and C.], at the request of the sd D., doth [do] hereby, for himself, his [themselves, their respective] heirs, exors, and admors, covenant with the sd K., his [K., L., and M., their] exors, admors, and assigns, THAT he the sd A., or his [they the sd A., B., and C., or their] heirs, will forthwith, at the costs of the sd D., his heirs, exors, admors, or assigns, procure [himself or] themselves to be admitted [tenant or] tenants of the sd copyhold or customaryhold hereditaments and premises comprised in the hereinbefore recited indre, &c., *the previous transfer*, and the surrender of, &c.: AND WILL forthwith after such admittance, at the like costs, well and effectually surrender the same, *continue covenant to surrender, as in Prec.* XLIX. (*a*): AND FURTHER that in the meantime, and until such surrender shall be made, the sd A., his [A., B., and C., their] heirs and assigns, will stand seised of the same premises in trust for the sd K., his [K., L., and M., their] heirs and assigns, subject to such right or equity of redemption as is now subsisting therein as aforesd; *Covenant by D. with*, "K., his [K., L., and M., their] exors, admors, and assigns, that he, the sd D., his heirs, exors, or admors, will on demand repay to the sd K., his [K., L., and M., their] heirs, exors, admors, or assigns, ALL AND EVERY sum or sums of money which [he or] they may pay in respect of the admission of the sd A., his [A., B., and C., their] heirs or assigns, to the sd copyhold premises, and the subsequent surrender by [him or] them, according to the covenant hereinbefore contained, WITH interest thereon after the rate aforesd from the time or times of payment, and that in the meantime the same moneys and interest shall be a charge on the sd mortgaged premises;" *Covenant by A.*,

Further witnesseth.

Covenant by mortgagees to be admitted, and surrender copyholds.

And in the meantime to hold premises in trust for transferee.

Covenant by mortgagor to repay sums paid by transferee for admission.

(*a*) As to the mode of transfer of copyholds, see p. 861, note (*d*).

PREC. LI. [*B., and C.*] *against incumbrances*, p. 739 ; [*Declaration that money belongs to K., L., and M., on a joint account*, p. 716].

IN WITNESS, &c.

LII.

PREC. LII. ADMITTANCE *of a* MORTGAGEE *to* COPYHOLDS, *preparatory to a* TRANSFER.

Manor of ——
County of ——
} The —— day of ——

Recitals. Surrender.

WHAS on the —— day of ——, A., *mortgagor*, of, &c., one of the copyhold tenants of the sd manor, came before me, X., [deputy] steward of the sd manor, and did out of court surrender into the hands of the lord of the sd manor, *parcels*, with their appurtenances, to the use of B., *mortgagee*, of, &c., his heirs and assigns, according to the custom of the sd manor by and under the rents, fines, heriots, suits, and services due and of right accustomed for the same, subject to a condition for making void the same surrender on payment by the sd A., his heirs, exors, admors, or assigns, to the sd B., his exors, admors, or assigns, of the sum of £——, with interest for the same at the rate thereinafter

State of mortgage debt.

mentioned on a day now past : AND WHAS the sd sum of £—— with some interest remains due to the sd B. NOW

Memorandum of admittance.

BE IT REMEMBERED that on the day first above mentioned the sd B. came before me, the sd X., [deputy] steward of the sd manor out of court, and prayed to be admitted tenant to the sd hereditaments so surrendered to his use as aforesd, of which sd hereditaments the lord of the sd manor, by me the sd X., granted seisin by the rod, TO HAVE AND TO HOLD the sd hereditaments, with their appurtenances, UNTO the sd B. and his heirs at the will of the lord according to the custom of the sd manor, by and under the rents, fines, heriots, suits, and services, due and of right accustomed for the

same: And so, saving the right of the lord and the right of all persons interested in the equity of redemption of the sd hereditaments and premises, the sd B. is admitted tenant of the same, and pays to the lord on such his admittance a fine certain of £——, and his fealty is respited. PREC. LII.

LIII.

CONDITIONAL Surrender *of* Copyholds *by* Mortgagor *to* Transferee *of mortgage*. Variations *where the* Surrender *is made by a* Mortgagee *who has been admitted.* PREC. LIII.

Manor of ——
County of ——
} BE IT REMEMBERED that on the —— day of ——, A., *mortgagor*, [B., *mortgagee*,] of, &c., a customary tenant of the sd manor came before me, X., [deputy] steward of the sd manor, and in consideration of the sum of £—— paid by C., *transferee*, of ——, to B. of, &c., by the direction of the sd A., [to the sd B.] in satisfaction of all principal moneys and interest secured to the sd B. by a conditional surrender, dated, &c., of the copyhold hereditaments hereinafter mentioned, [to which sd hereditaments the sd A. [B.] was admitted on the —— day of ——] did out of court surrender, &c., as in Precedent X., p. 754, *where the surrender is by the mortgagee, instead of the words*, "and also subject to a condition, &c.," *say*, "Subject to such equity of redemption as is now subsisting in the sd premises by virtue of the aforesd conditional surrender of the —— day of ——."

LIV.

PREC. LIV.

TRANSFER *of a* MORTGAGE *of* FREEHOLDS, *the mortgagor receiving a* FURTHER ADVANCE *and bringing* ADDITIONAL FREEHOLDS *into mortgage.*

Parties A., *mortgagee*, 1; B., *mortgagor*, 2; C., *transferee*, 3; *Recite the mortgage as in Prec.* XLIX.; *State of mortgage debt, all interest having been paid*, p. 694; *Title of B. to the additional freeholds:* AND WHAS the sd C. has agreed, at the request of the sd A., to pay to the sd B. the sd sum of £——, and to lend to the sd A. the further sum of £——, upon having such transfer as is hereinafter contained of the sd mortgage debt of £—— and interest, and the securities for the same, and upon having the repayment of the sd sums of £—— and £——, making an aggregate principal sum of £——, with interest at the rate hereinafter mentioned, secured and further secured respectively in manner hereinafter appearing. NOW THIS INDRE WITNESSETH that in pursuance of the recited agreement and in consideration of the sum of £——, *the original mortgage debt*, upon the execution of these presents to the sd A. paid by the sd C., *receipt by A.*, and of the sum of £——, *the further advance*, upon the execution of these presents to the sd B. paid by the sd C., the payment and receipt respectively of which sums of £—— and £——, making the aggregate sum of £——, the sd B. doth hereby acknowledge, *Assignment of mortgage debt and securities*, p. 863; *Further testatum covenant by B. for payment of aggregate debt*, p. 696; *and interest after default*, p. 696; *Further testatum*, the sd A. at the request of the sd B., so far only as regards the hereditaments first hereinafter described and expressed to be hereby granted, doth hereby grant, and the sd B., as to all the hereditaments hereinafter described and expressed to be hereby granted, doth hereby grant and confirm unto the sd C., his heirs and assigns; first, *the freeholds in original mortgage, by*

Recitals.

Agreement.

Witnesseth.

Assignment of mortgage debt.

Further witnesseth.

Grant.

reference as in Prec. XLIX.; secondly, *the additional freeholds, General words,* p. 264; *Estate clause,* p. 264; *Habendum to C. in fee,* Freed and discharged as regards the hereditaments and premises first hereinbefore expressed to be hereby granted from all right or equity of redemption under or by virtue of the hereinbefore recited indre of mortgage, but subject as regards all the hereditaments and premises hereinbefore expressed to be hereby granted to the proviso for redemption hereinafter contained, *Proviso for redemption on payment of aggregate loan and interest,* p. 701; *Proviso (if any) in mortgage for reduction of interest to extend to new advance,* p. 850; [*Powers in original mortgage to extend to new advance,* p. 852, *mutatis mutandis; Power of sale in mortgage to extend to new freeholds,* p. 853] (*b*); *Insurance and attornment clauses (if any) in mortgage to extend to new freeholds,* p. 853; *Mortgagee's indemnity clause,* p. 729; *Covenant by A. against incumbrances,* p. 739; *Covenants by B. for title,* p. 730. PREC. LIV.

In witness, &c.

LV.

TRANSFER *by* Endorsement *of* Mortgage *of* Freeholds, Leaseholds, and Copyholds, *the* Mortgagor Not *being a* Party (*c*), *where the* Mortgagees *are* Trustees *and the* Trust *is* Not Disclosed, *the* Transfer *being made on the* Appointment *of* New Trustees. Variations *where there is a* Continuing Trustee (*d*). PREC. LV.

(*b*) If thought desirable, a new power of sale, extending to all the property, may be inserted, in which case the clauses in this bracket will be omitted, and the words in p. 862, note (*b*), *mutatis mutandis,* added to the assignment of the debt. See p. 853, note (*b*).

(*c*) The mortgagor is not usually made a party in this case.

(*d*) If there is a continuing trustee, the parties will be A., *retiring*

PREC. LV.

Recitals.

Title of transferees.

Agreement.

Parties, A. and B., *trustees and mortgagees*, 1; C., D., and E., *new trustees and transferees*, 2; *Recite state of mortgage debt*, p. 694: And whas the said C., D., and E. have become entitled in equity to the sd principal sum of £—— and the interest now due and henceforth to become due on the same: And whas the said A. and B. have agreed, at the request of the sd C., D., and E., to execute such transfer of the sd principal sum of £—— and interest and the securities for the same as is hereinafter contained. *The operative clauses will be similar to those in Prec.* XLIX., *with the variations for an endorsed deed indicated in note* (*b*) *to that Precedent, and except that the consideration will be,* "in consideration of the premises."

In witness, &c. (*e*)

LVI.

PREC. LVI.

Transfer *of* Mortgage *of a* Reversionary Interest *in* Personalty *and* Policy *of* Assurance *on the mortgagor's life, the mortgagor receiving a* Further Advance, *and extending the security to* Future Advances, *with provisions for* Capitalizing Interest *in arrear and charging* Compound Interest.

trustee, and B., *continuing trustee*, 1; B., and C. and D., *new trustees*, 2; the mortgage debt will be assigned by A. and B. to B., C., and D., with a power of attorney to B., C., and D., to use the names of A. and B.; the freeholds will be conveyed by A. and B. to "C. and D., and their heirs, to the use of B., C., and D., their heirs and assigns;" and the leaseholds will be assigned by A. and B. to "B., C., and D., their exors, admors, and assigns;" and A. and B. will covenant with C. and D. to surrender the copyholds to the use of B., C., and D.; and the covenant against incumbrances will be entered into by A. and B. with C. and D. See the Precedent of an appointment of a new trustee, where the trust funds are invested on mortgage, at p. 94, and as to the mode of conveying the trust estate, see the Precedents at pp. 98 and 103.

(*e*) Notice to be given to the mortgagor.

PREC. LVI.

Parties, A., *mortgagee*, 1; B., *mortgagor*, 2; C., *transferee*, 3; *Recite title of B. to reversionary share in the funds comprised in his parents' marriage settlement subject to their life interests; and to a policy on his life*, p. 239; *Mortgage to A.*, p. 692, *mutatis mutandis, setting out also the trusts of moneys to be received by the mortgagee; State of mortgage debt, no interest being due*, p. 694: AND WHAS the sd C. has agreed at the request of the sd B. to pay to the sd A. the sd sum of £——, and to advance to the sd B. the further sum of £——, making an aggregate sum of £——, upon having such transfer of the sd mortgage debt of £—— and the interest henceforth to become due in respect thereof and the securities for the same as is hereinafter contained, and upon having the sd aggregate debt of £——, with any future advances which he the sd C. may hereafter make to the sd B., with interest at the rate hereinafter mentioned, secured in manner hereinafter appearing; And it has been further agreed that such arrangement as is hereinafter contained should be entered into with respect to the capitalizing interest in arrear, and charging interest in the nature of compound interest: NOW THIS INDRE WITNESSETH that in pursuance of the recited agreement, *consideration and receipt as in Precedent* LIV., p. 870, *Assignment by A. at request of B. to C. of the mortgage debt and securities as in Prec.* L., *with the addition mentioned in the note (c) to that Precedent*, p. 862; *Covenant by B. with C. for payment of aggregate debt and interest on next day for payment of interest, and future advances*, p. 697; *and interest after default*, p. 697: AND THIS INDRE ALSO WITNESSETH that in further pursuance of the sd agreement and for the considerations aforesd the sd A., at the request of the sd B., doth hereby assign and transfer, and the sd B. doth hereby assign and confirm unto the sd C., his exors, admors, and assigns, ALL THE part, share, or interest by the hereinbefore recited indre of mortgage expressed to be assigned of and in the trust moneys, stocks, funds, and securities therein mentioned and of and in the dividends, interest, and

Recitals.

Agreement.

Witnesseth.

Assignment of mortgage debt.

Further witnesseth.

Assignment of reversion and policy.

PREC. LVI.

annual produce thereof: And also the policy of assurance and moneys comprised in or expressed to be mortgaged by the same indre: And all other the premises comprised in or expressed to be assigned by the sd indre of mortgage: [And all and singular other, if any, the parts, shares, or interests whatsoever to which the sd B. is or may become entitled of and in the said trust moneys, stocks, funds, securities, and premises or any part thereof, or of and in the dividends, interest, and annual produce thereof]; *Estate clause*, p. 264: And the full benefit of the powers and provisions in the sd indre of mortgage contained with respect to the recovery, receipt, or obtaining possession of and giving receipts and discharges for the sd mortgaged premises or otherwise in relation thereto: To hold the sd premises lastly hereinbefore expressed to be hereby assigned Unto the sd C., his exors, admors, and assigns, discharged from all right or equity of redemption under the sd indre of mortgage, but subject to the proviso for redemption hereinafter contained, *Proviso for redemption*, p. 703, *on payment of aggregate debt and future advances and interest; add if desired new covenants by B. with C. to keep up the policy*, p. 718; *and a new power of sale*, p. 708; *with proviso keeping alive the old power*, p. 865, *extended to future advances; or add agreement that powers in original mortgage shall extend to new and future advances*, p. 856, *mutatis mutandis:* Provided always, and it is hereby agreed and declared that in case any half-yearly or other payment of interest upon the moneys for the time being owing on the security of these presents (inclusive of any further sum which may be advanced or paid or become owing as aforesd, and of any interest which may be added to principal by virtue of this present proviso), or any part thereof respectively, shall remain unpaid for —— days after the same shall become due, the interest so in arrear shall be added to the principal moneys for the time being owing on this security, and bear interest after the rate aforesd from the half-yearly day when the same became due in the same manner as if the interest so in arrear were a further advance made by the sd C., his

Habendum.

Proviso for capitalization of interest.

exors, admors, or assigns, to the sd B., his exors, admors, or assigns, on such day, so that the amount of the principal moneys intended to be hereby secured may accumulate to the extent of the interest which may remain in arrear as aforesd in the way of compound interest by the half-yearly addition of interest, and the covenant on the part of the sd B. hereinbefore contained for the payment of the principal moneys and interest intended to be hereby secured shall extend to all additions to the sd principal moneys arising from such capitalized interest and the interest to accrue due thereon, and the sd mortgaged premises shall stand charged therewith accordingly, [AND IT IS HEREBY agreed that for the sake of convenience any further advance by the sd C. to the sd A. (other than payments made for keeping up or renewing the sd policy), shall be made on the half-yearly days hereinbefore appointed for the payment of interest under this security, and shall be in sums of not less than £—— at any one time]: PROVIDED ALWAYS that nothing herein contained shall in anywise be deemed to render it obligatory on the sd C., his exors, admors, or assigns, to make any further advance or payment to or on account of the sd B., his heirs, exors, admors, or assigns; *Mortgagee's indemnity clause*, p. 729; *Covenant by A. against incumbrances*, p. 739; *Covenants by B. for title*, p. 739.

PREC. LVI.

Advances to be made on days appointed for payment of interest.

Transferee not to be bound to make advances.

IN WITNESS, &c. (*a*).

LVII.

TRANSFER *of* MORTGAGE *of* FREEHOLDS PREPARATORY *to a* CONSOLIDATION DEED.

PREC. LVII.

Parties, A., *mortgagee*, 1; B., *mortgagor*, 2; C., *transferee*, 3. *Recite the mortgage stating the covenant for pay-*

(*a*) Notice to be given to the trustees of the reversionary interest, and the insurance office.

PREC. LVII. *ment, the grant setting out the parcels fully, and the proviso for redemption, and any provisions, such as for reduction of interest on punctual payment, which alter the primary agreement,* p. 692; *State of mortgage debt, all interest having been paid,* p. 694: NOW THIS INDRE WITNESSETH that in pursuance of the recited agreement, *Consideration,* p. 695, *transfer of the mortgage debt and future interest with the benefit of the power of sale and other securities as in Prec.* L.: AND THIS INDRE ALSO WITNESSETH, &c., *Grant by A. at request of B. of freeholds to C., subject to redemption, &c., as in Prec.* L.; *Covenant by A. against incumbrances,* p. 739.

IN WITNESS, &c.

LVIII.

PREC. LVIII. DEED CONSOLIDATING *several* MORTGAGES *transferred to a person who pays them off.* VARIATION *where a* FURTHER ADVANCE *is made to the Mortgagor.*

Recitals. Parties, A., *mortgagor,* 1; B., *transferee,* 2. WHAS the

Title of mortgagor. sd A. is entitled for an estate in fee simple in possession to the —— and hereditaments first and secondly hereinafter described and hereinafter expressed to be hereby granted, subject as to the hereditaments first hereinafter described to a mortgage debt of £—— and interest secured by an indre of mortgage dated the —— day of ——, and subject as to all the sd hereditaments hereinafter described to a mortgage debt of £—— and interest secured by an indre of mortgage, dated, &c., being a mortgage for securing the sum of £—— and interest, and such further advances as are therein mentioned, but all interest on the sd several principal sums of £—— and £—— has been paid up to the day of the

Agreement for loan. date of these presents: AND WHAS the sd B. has agreed to lend to the sd A. the sum of £——, *the total sum now*

PREC. LVIII.

advanced, upon having the repayment of the same secured in manner hereinafter appearing: AND WHAS upon the treaty for the sd loan it was agreed that the sd several mortgage debts of £—— and £——, making together £——, should be paid off out of the sd sum of £——, *the total sum now advanced*, and that the sd several mortgage debts and interest, and the securities for the same, should be transferred to the sd B. in manner hereinafter appearing: AND WHAS in part performance of the sd agreement by an indre bearing date the day before the date of these presents, and expressed to be made between C. of the first part, the sd A. of the second part, and the sd B. of the third part, after recitals by which it appeared that the sd mortgage debt of £——, and the securities for the same, were then vested in the sd C., but that all interest on the sd sum of £—— had been paid up to the date of the indre now in recital, *formal recital of transfer of mortgage debt of £—— and securities*, p. 235, *the transfer being taken in the form given in the last precedent; similar recital of transfer of the other mortgage debt and securities*: NOW THIS INDRE WITNESSETH that in further pursuance of the recited agreement, and in consideration of the several sums of £—— and £—— paid to the sd C. and D. respectively by the sd B., at the request of the sd A., in manner aforesd [and of the further sum of £—— now paid to the sd A. by the sd B.], the payment and receipt in manner aforesd of which sd sums of £—— and £—— [and £——], making together the sd sum of £——, the sd A. doth hereby acknowledge, *Covenant by A. for payment of total sum and interest*, p. 696; *and interest after default*, p. 696: AND THIS INDRE ALSO WITNESSETH that in further pursuance of the recited agreements and for the consideration aforesd the sd A. doth hereby grant, release, and confirm unto the sd B., his heirs and assigns, First, *parcels from first recited mortgage*, And secondly, *other parcels in secondly recited mortgage; General words*, p. 264; *Estate clause*, p. 264: TO HAVE AND TO HOLD all the sd hereditaments and

Agreement for transfer.

Transfer.

Witnesseth.

Covenant for payment.

Further witnesseth.

Grant.

Parcels.

Habendum.

PREC. LVIII.

To the use of transferee, so as to keep alive the old securities.

premises hereinbefore expressed to be hereby granted UNTO the sd B., his heirs and assigns, TO THE USE of the sd B., his heirs and assigns, for ever, subject to the sd securities for the sd several mortgage debts of £—— and £——, which with such securities have been transferred to the sd B. as aforesd, and so that all the same securities, including the respective powers of sale therein contained, shall continue on foot for the benefit of the sd B., his exors, admors, and assigns, and for securing to him or them the whole of the sd principal sum of £——, *the total advance*, intended to be hereby secured, and the interest thereon: And accordingly that the mortgages effected by the sd several indres of, &c., respectively, for securing the sd several sums of £—— and £—— and interest, shall be discharged from the respective provisoes for redemption therein contained, and from the other provisions, if any, thereof which may be inconsistent with the provisions of these presents, but so nevertheless that all the sd premises hereinbefore expressed to be hereby granted shall be subject to the proviso for redemption hereinafter contained. *Proviso for redemption on payment of aggregate sum and interest*, p. 701; *Covenant for insurance against fire if appropriate*, p. 720; *Power of sale*, p. 704; *Mortgagee's indemnity clause*, p. 729; *Attornment clause if A. is in possession*, p. 725; *Covenants by A. for title subject to the recited mortgages*, p. 730.

IN WITNESS, &c.

LIX.

PREC. LIX.

TRANSFER *of a* MORTGAGE *to a* TRUSTEE *so as to keep it on foot for the benefit of a* TENANT FOR LIFE *who pays it off,* PART *of the property having already been* RECONVEYED (*a*).

(*a*) Compare the Precedent of an assignment of a legacy to a trustee for the tenant for life, p. 422.

PREC. LIX.

Parties A., *mortgagee*, 1; B., *tenant for life*, 2; C., *trustee*, 3. *Recite mortgage*, p. 692; *Settlement of equity of redemption under which B. is tenant for life*, p. 238; *Reconveyance of part of the hereditaments; State of mortgage debt*, p. 694: AND WHAS the sd B. is desirous of paying off the sd mortgage debt, and of having the same assigned to the sd C. as a trustee for him the sd B., so as to keep the same on foot as a subsisting charge on the hereditaments remaining subject thereto, and the sd A. has at his request agreed to accept payment of the sd principal sum, and to execute such transfer accordingly: NOW THIS INDRE WITNESSETH that in pursuance of the recited agreement, *consideration*, *receipt*, the sd A., at the request of the sd B., doth hereby assign and transfer unto the sd C., his exors, admors, and assigns THE SD principal sum of £——, with the interest henceforth to accrue due thereon, and the full benefit and advantage of every covenant and provision contained in the sd indre of mortgage, and all other securities for the same; *Estate clause*, p. 264; TO HAVE AND TO HOLD the sd premises hereinbefore expressed to be hereby assigned UNTO the sd C., his exors, admors, and assigns, IN TRUST for the sd B., his exors, admors, and assigns, as his and their own proper moneys, and to be assigned and disposed of as he or they shall direct, and in the meantime to be kept on foot as a subsisting charge for his and their benefit upon the hereditaments subject thereto: AND THIS INDRE ALSO WITNESSETH that in further pursuance of the recited agreement, and in consideration of the premises, the sd A., at the request of the sd B., doth hereby grant unto the sd C., his heirs and assigns, ALL AND SINGULAR, the messuages, lands, tenements, hereditaments, and premises comprised in and assured by the hereinbefore recited indre of mortgage of, &c., save and except such part or parts thereof as were conveyed and released by the hereinbefore recited indre of the —— day of ——, AND (by way of conveyance and not of exception) all other, if any, the hereditaments now remaining vested in the sd A., subject to redemption under

Recitals.

Agreement.

Witnesseth.

Assignment.

Mortgage debt.

Habendum.

To trustee.

In trust for tenant for life.

Further witnesseth.

Grant.

Parcels.

PREC. LIX.

General words.

Habendum.

To use of trustee in fee upon trust for tenant for life.

or by virtue of the sd indre of mortgage, TOGETHER WITH all and singular the appurtenances thereto belonging, *Estate clause*, p. 264, TO HAVE AND TO HOLD all the sd hereditaments and premises hereinbefore expressed to be hereby granted UNTO AND TO THE USE of the sd C., his heirs and assigns, for ever, NEVERTHELESS IN TRUST for the sd B., his exors, admors, and assigns, and to be conveyed and disposed of as he or they shall direct, but subject to the right or equity of redemption subsisting in the same premises upon payment of the sd sum of £—— and the interest thereof, *Covenant by A. with C., his heirs, exors, admors, and assigns, against incumbrances*, p. 739.

IN WITNESS, &c.

LX.

PREC. LX.

TRANSFER *without the* CONCURRENCE *of the* MORTGAGOR *of an* EQUITABLE MORTGAGE *created by deposit of* DEEDS *and* AGREEMENT (*a*). *A short form by endorsement.*

I, the within-named A., *mortgagee*, do hereby assign unto B., *transferee*, of, &c., the within-mentioned sum of £——, with the interest thereon, as from the —— day of —— last, and henceforth to become due, TOGETHER WITH the within-mentioned deeds and writings, AND WITH the benefit of the charge and undertaking by the within-named C., *mortgagor*, in the within-written memorandum contained: AND I undertake that I, my exors or admors, will, if required, execute and deliver to the sd B., his exors, admors, or assigns, at his or their cost, such formal and effectual transfer by deed of the above-mentioned principal sum and interest, and the securities for the same, in such form and with such power of attorney for him or them to demand, sue for, and recover

(*a*) See Prec. II., p. 742.

the sd principal sum, and interest, in the name or names of me, the sd A., my exors or admors, and other provisions as may be reasonably required. PREC. LX.

As WITNESS my hand this —— day of —— (*b*).

LXI.

RECONVEYANCE *by* MORTGAGEE *in* FEE *of* FREEHOLDS, *endorsed on the Mortgage.* VARIATIONS *for a Mortgage to* TRUSTEES, *and where* RECITALS *are* OMITTED. *Also where the Property is reconveyed to* USES *to bar* DOWER (*c*). PREC. LXI.

Parties, A. [and B.], *mortgagees*, 1; C., *mortgagor*, 2; [D., *dower trustee*, 3]. [(*d*) *Recite state of mortgage debt, all interest being paid*, p. 694: AND WHAS the sd C. is desirous of paying off the sd principal sum of £——, and of having the within mentioned hereditaments and premises released and reconveyed in manner hereinafter expressed; [*or*, WHAS all principal moneys and interest which were at any time due or owing on the security of the within written indre have been fully paid off and discharged, as the sd A. doth, [A. and B. do] hereby admit and declare, and the sd C. is desirous of having the within mentioned hereditaments and premises released and reconveyed in manner hereinafter expressed]: NOW THIS INDRE WITNESSETH, that in consideration of all interest on the sd sum of £—— having been paid as

Recitals.

Intention to pay off.

Variation.

Witnesseth.

(*b*) Notice to be given to C.

(*c*) As to reconveyances, see Dav. Prec., vol. ii., part 2, pp. 824, 1330, *et seq.* 3rd ed.; Elphinstone's Introd. Conv. 187, *et seq.*

(*d*) If the deed is framed without recitals, substitute for the words in this bracket the words, "WITNESSETH that in consideration of all interest on the within mentioned sum of £—— having been paid up to the date of these presents and of the."

PREC. LXI.

aforesd, and of the] sum of £—— upon the execution of these presents paid to the sd A. [and B.] by the sd C., the receipt whereof the sd A. doth, [A. and B. do] hereby acknowledge [*add if desired*, and doth [do] declare the same to be in full satisfaction and discharge of all principal moneys and interest secured or intended to be secured by, or now owing under or by virtue of, the within written indre], [*or, if the repayment of the mortgage money is recited, say*, in consideration of the premises], the sd A. doth [A. and B. do] hereby grant and release unto the sd C., his heirs and assigns, ALL AND SINGULAR the —— hereditaments and premises comprised in, or expressed to be granted or assured by the within written indre, or which are now by any means (*e*) vested in the sd A. [and B], subject to redemption by virtue of the same indre, WITH the rights, members, and appurtenances to the sd premises belonging, or reputed to belong. *Estate clause*, p. 264: TO HAVE AND TO HOLD all the sd hereditaments and premises hereinbefore expressed to be hereby granted UNTO the sd C., his heirs and assigns, TO THE USE of the sd C., his heirs and assigns for ever, [subject to the leases, agreements for leases and tenancies affecting the sd respective premises, but] freed and discharged from the within mentioned sum of £——, and the interest thereon, and all moneys whatsoever now or at any time heretofore due, or owing on the security of, and from all charges, claims, and demands whatsoever under or by virtue of, the within written indre, or otherwise howsoever; [*if to uses to bar dower, say*, "UNTO the sd C., and his heirs, freed and discharged," &c., *as above*, "TO SUCH USES," &c., *as in a conveyance on sale*, p. 266.] *Covenant by A.* [*and B.*] *against incumbrances*, p. 739.

Grant.

Parcels.

General words.

Habendum.

To use of mortgagor free from mortgage.

IN WITNESS, &c.

(*e*) If the mortgage is an old one and there may have been accretions to the property arising from enclosures, &c., say, "or which are now by means of any enclosure, award, or otherwise vested, &c."

LXII.

RELEASE *of* COPYHOLDS *from* CHARGES *created by* CONDITIONAL SURRENDER, *and by* COVENANT *to* SURRENDER. PREC. LXII.

Parties, A., B., and C., *first mortgagees*, 1; D., E., and F., *second mortgagees*, 2; G. and H., *trustees of mortgagor's will*, 3. *Recite first mortgage by covenant to surrender*, p. 233; *and conditional surrenders, pursuant thereto*, p. 694; *second mortgage by covenant to surrender:* AND WHAS no surrender has ever been made in pursuance of the covenant contained in the sd lastly hereinbefore recited indre; *Will of X., mortgagor*, p. 237, *devising his real estate to G. and H. in trust, and appointing exors; death and probate*, p. 243; *state of mortgage debts, all interest paid*, p. 694: AND WHAS the sd G. and H., as such trustees as aforesd, are desirous of paying off the sd sums of £—— and £——: AND WHAS satisfaction of the sd conditional surrenders to the sd A., B., and C. is intended to be forthwith entered on the Court rolls of the respective manors of which the sd copyhold hereditaments are held: NOW THIS INDRE WITNESSETH that in consideration of £—— to the sd A., B., and C. paid by the sd G. and H. (as such trustees as aforesd), and also in consideration of £—— to the sd D., E., and F. paid by the sd G. and H. (as such trustees as aforesd), in full satisfaction of all moneys remaining due to the sd A., B., and C., and the sd D., E., and F. respectively, on the security of the sd hereinbefore recited indres of mortgage respectively (the receipt, &c.), the sd A., B., and C., and the sd D., E., and F. do, and every of them doth, hereby release unto the sd G. and H. as such trustees as aforesd, their heirs and assigns: ALL AND SINGULAR the customary or copyhold messuages, lands, tenements, and hereditaments, comprised in the sd respective herein-

Recitals.

No surrender made.

Intention to pay off.

Satisfaction to be entered up.

Witnesseth.

Release.

Parcels.

PREC. LXII.

before recited mortgage securities, WITH the rights, members, and appurtenances thereof respectively; *Estate clause*, p. 264; *Habendum*, UNTO AND TO THE USE of the sd G. and H., their heirs and assigns, to the intent that the sd G. and H., their heirs and assigns, may henceforth hold the sd premises, UPON SUCH TRUSTS and for such purposes as are by the sd will of the sd X., deceased, expressed concerning the hereditaments thereby devised, or such of the same trusts and purposes as are now subsisting and capable of taking effect, FREED and discharged from all claims and demands whatsoever of the sd A., B., and C., and the sd D., E., and F. respectively, or any of them, in to or out of the same premises respectively, or any part thereof, by virtue of the sd respective hereinbefore recited securities, or otherwise howsoever. *Covenants by parties of first and second parts against incumbrances*, p. 740.

Habendum to use of trustees.

Upon trusts of will.

Free from mortgage.

IN WITNESS, &c.

LXIII.

PREC. LXIII.

WARRANT *to enter up* SATISFACTION *on a* CONDITIONAL SURRENDER.

Manor of —— } I, A., *mortgagee*, of ——, do hereby admit
County of —— } that I have received all principal moneys and interest, the payment whereof was intended to be secured to me by a conditional surrender dated the —— day of —— by B., *mortgagor*, of, &c., of certain copyhold, or customary hereditaments, situate, &c., held of the sd manor; and I authorize and direct the steward of the sd manor to enter satisfaction of the sd conditional surrender on the rolls of the sd manor, and for so doing this shall be his sufficient warrant and authority.

Dated this —— day of ——.

(Signed) A.

LXIV.

PREC. LXIV.

RECONVEYANCE *by independent deed* (*d*) *by several* MORTGAGEES (TRUSTEES) *of* FREEHOLDS *to the* HEIR *or* DEVISEE *of the mortgagor, there having been a* FURTHER CHARGE *and a* TRANSFER *of the Original Mortgage.* VARIATIONS *for* PART *of the property having been* SOLD *with the* CONCURRENCE *of the* MORTGAGEES, *and where the* PRINCIPAL *has been paid off by* INSTALMENTS, *and for a* RECONVEYANCE *to the* USES *of a settlement or will.*

Parties A., B., and C., *mortgagees*, 1; D., *heir or devisee of mortgagor, or*, D. and E., *trustees of will or settlement, and grantees to uses*, 2. *Recite mortgage by K. to X., stating the conveyance and proviso for redemption, and setting out the parcels at length*, p. 234; *Further charge*, p. 235; *Transfer, stating the assignment of the debt, the conveyance of the estate, and the new proviso for redemption (if any), and if any of the transferees have died, the joint account clause*, p. 235; [*Where part of the property has been sold say*, "AND WHAS the sd K., with the privity of the sd A., B., and C., in the year —— sold a portion of the hereditaments comprised in the sd indres of, &c., *the mortgage, further charge and transfer*, consisting of a piece of land containing —— acres, situate, &c., to Y., and in the year ——, with the like privity, sold a further portion thereof consisting of, &c., to Z., and on the completion of the sd several sales, the sd A., B., and C. joined in the several conveyances of the same lands and hereditaments to the respective purchasers thereof, but the purchase moneys payable for the same were received by the sd K., except as to £——, which was paid to and received by the sd A., B., and

Recitals.

Sale of part of land.

(*d*) The reconveyance might be endorsed on the transfer, in which case the recitals up to and including the transfer would be omitted.

PREC. LXIV.

C., in part discharge of the principal sum of £—— secured by the sd indres of, &c., *the mortgage, further charge and transfer*, whereby the same was reduced to £——]: AND WHAS the sd K. died on the —— day of —— intestate, leaving the sd D. his eldest son and heir at law, who thereupon became entitled to the equity of redemption of the sd mortgaged hereditaments and premises [other than the parts thereof so sold as aforesd]; *or recite will of K., setting out the devise of the equity of redemption to D., or in strict settlement, D. and E. being the trustees; death and probate; or recite strict settlement, D. and E. being the trustees*; [(c) *state of mortgage debt*, p. 694, *form* XI.: AND WHAS the sd D. has [D. and E. have] agreed to pay off and discharge the sd mortgage debt [out of moneys in their hands as trustees of the sd will, *or* "settlement," applicable for that purpose], and has [have] requested the sd A., B., and C., to release and

Death of mortgagor, and devolution of equity of redemption.

Intention to pay off.

(c) Where the principal has been paid off by instalments, substitute for the part in this bracket the words, "AND WHAS the sd D. has [D. and E. out of moneys in their hands as trustees of the sd will [settlement] applicable for that purpose have] paid to the sd A., B, and C., the several sums of £—— and £—— on the —— day of ——, and —— day of ——, in part discharge of the sd mortgage debt, and has [have] paid to them the sum of £——, the balance thereof, on the execution of these presents, And all interest on the principal moneys for the time being owing on the security of the sd indres of mortgage, further charge, and transfer, up to the date of these presents, has been fully paid, as they, the sd A., B., and C., do hereby acknowledge: AND WHAS the sd A., B., and C., have agreed, at the request of the sd D. [and E.], to execute such release and reconveyance as is hereinafter contained: NOW THIS INDRE WITNESSETH, that in pursuance of the sd agreement, and in consideration of all principal moneys and interest secured by the hereinbefore recited indres of mortgage, further charge, and transfer, having been fully paid and satisfied in manner aforesd."

reconvey the sd hereditaments and premises in manner hereinafter appearing: NOW THIS INDRE WITNESSETH that in consideration of the sum of £—— upon the execution of these presents paid by the sd D. [and E., out of moneys in their hands as such trustees as aforesd,] to the sd A., B., and C., in full satisfaction and discharge of all principal moneys and interest due or owing on the security of the hereinbefore recited indres of, &c., *the mortgage, further charge, and transfer*, or any of them, the receipt whereof they the sd A., B., and C., do hereby acknowledge] they the sd A., B., and C., do respectively hereby grant and release unto the sd D., his [D., and E., their] heirs and assigns, ALL AND SINGULAR the —— hereditaments and premises comprised in or expressed to be granted or assured by the hereinbefore recited indre, &c., *the transfer*, or which are now [*or*, save and except such parts thereof as have been sold and conveyed to the respective purchasers thereof, as hereinbefore mentioned, and by way of conveyance, and not of exception, all other, if any, the hereditaments which are now] by any means vested in the sd A., B., and C., or any of them, subject to redemption under or by virtue of the sd indres of &c., *the mortgage, further charge and transfer*, or any of them, WITH the rights, easements, and appurtenances thereof; *Estate clause*, p. 264; *Habendum to D. in fee, subject to leases, &c., if any, discharged from claims under the* "mortgage, further charge, and transfer, or any of them," *as in Prec.* LXI., [*or Habendum*, "UNTO the sd D. and E., and their heirs," *subject, &c., and discharged as above,* TO THE USES upon the trusts, and with and subject to the powers and provisions by the hereinbefore recited will of the sd K. [indre of settlement of, &c.,] limited, declared, or expressed, concerning the sd premises, or such of the same as may be subsisting or capable of taking effect.] *Covenant by A., B., and C., with D.* [*and E.,*] *against incumbrances*, p. 740.

PREC. LXIV.

Witnesseth.

Release.

Parcels.

Habendum.

IN WITNESS, &c.

LXV.

PREC. LXV.

RECONVEYANCE *by* ENDORSEMENT *by* DEVISEES *and* EXECUTORS *of* MORTGAGEE *of* FREEHOLDS *and* LEASEHOLDS *where the Mortgagor has devised and bequeathed the* EQUITY *of* REDEMPTION *to* TRUSTEES. VARIATIONS *where the* RECONVEYANCE *of the* FREEHOLDS *is by the legal personal* REPRESENTATIVE *of the mortgagee with or without* (*f*) *the* CONCURRENCE *of his* HEIR *or* DEVISEES.

Parties [A. *heir of mortgagee,* 1]; B. and C. [*devisees and*] *legal personal representatives of mortgagee,* 2; D., E., and F., *exors of mortgagor,* 3; D. and E., *trustees of mort-*

Recitals. *gagor,* 4. *Recite will of* H. *mortgagee, appointing B. and C. exors* [*and devising mortgaged estates to them*] p. 237; *Death and probate,* p. 243; [*or death of H. intestate,* 244, [*leaving A., his heir at law,*] *administration to B. and C.*]; *Will of K. mortgagor, whereby he devised and bequeathed,* " all his real and personal estate, including in such devise and bequest the equity of redemption of the hereditaments and premises comprised in the within written indre, unto the sd D. and E., their heirs, exors, admors, and assigns, upon the trusts in the sd will mentioned, and the sd testator thereby appointed the sd D., E., and F., his exors;" *Death*

Intention to pay off. *of testator and probate; State of mortgage debt,* p. 694: AND WHAS the sd D. and E., as such trustees as aforesd, are desirous of paying off the sd sum of £——, and having such release and reconveyance of the sd mortgaged premises

Agreement by exors to join. as is hereinafter contained: AND WHAS the sd D., E., and F., as such exors as aforesd, have agreed to join in these presents for the purpose of signifying their assent as such

(*f*) See the Vendor and Purchaser Act, 1874, 37 & 38 Vic., c. 78, s. 4. Notwithstanding the provisions of this section, it appears advisable, where possible, to obtain a reconveyance and covenant against incumbrances from the heir, or devisee, as well as the legal personal representative of the mortgagee. See p. 858, note.

exors as aforesd to the sd bequest of the leasehold premises comprised in the within written indre: NOW THIS INDRE WITNESSETH that in consideration of the sum of £—— now paid by the sd D. and E. as such trustees as aforesd out of moneys forming part of the estate of the sd testator to the sd B. and C., the receipt whereof is hereby acknowledged, the sd B. and C. do hereby grant and release [the sd A., by the direction of the sd B. and C., doth hereby grant, and the sd B. and C. do hereby grant, release, and confirm], unto the sd D. and E., their heirs and assigns, ALL AND SINGULAR the freehold —— hereditaments &c., *Parcels and General words, as in Prec.* LXI., [*where the reconveyance is by the legal personal representatives only, omit the words,* "vested in the sd A. and B.,"] *Estate clause, p.* 264; *Habendum unto and to the use of D. and E. in fee freed and discharged, &c., as in Prec.* LXI., "UPON THE TRUSTS, and subject to the powers and provisions in the sd recited will of the said K., declared and contained of and concerning the real estate thereby devised in trust as aforesd, or such of the same as are now subsisting and capable of taking effect." AND THIS INDRE ALSO WITNESSETH that for the consideration aforesd the sd B. and C. do hereby, by the direction of the said D., E., and F., as such exors as aforesd, assign [*if mortgage was by demise add,* and surrender] unto the sd D. and E., their exors, admors, and assigns, ALL AND SINGULAR the leasehold —— hereditaments and premises comprised in or expressed to be assigned [demised] by the within written indre, or which are now by any means vested in the said B. and C., subject to redemption by virtue of the same indre, WITH the rights, members, and appurtenances thereof, *estate clause,* p. 264: [*for a mortgage by assignment say,* TO HAVE AND TO HOLD all the said hereditaments and premises hereinbefore expressed to be hereby assigned UNTO the said D. and E., their exors, admors, and assigns, for all the residue now unexpired of the term of years granted by and subject to the rent and covenants by the lessee reserved by and

PREC. LXV.

Witnesseth.

Grant.

Freehold parcels.

Habendum to trustees upon trusts.

Further witnesseth.

Assignment.

Leasehold parcels.

Habendum to trustees.

PREC. LXV. contained in the within recited indre of lease] [*for a mortgage by demise omit the words in the preceding bracket and say,* to the intent that the term of years granted by the within written indre may merge in the term of years granted by the within recited indre of lease and become extinguished, and that the sd premises may henceforth be held by the sd D. and E., their exors, admors, and assigns,] freed and discharged, &c., *as above, upon the trusts, &c., declared by the will,* "concerning the leasehold premises thereby bequeathed in trust as aforesd," *as above, covenant by* [*A.*] *B. and C. against incumbrances,* p. 740.

IN WITNESS, &c.

LXVI.

PREC. LXVI. RECONVEYANCE *by Mortgagee of* PERSONALTY. VARIATIONS *for a Mortgage to* TRUSTEES, *and for a Mortgage of a* LIFE INTEREST *in* REALTY *effected by* DEMISE.

Parties, A. [and B], *mortgagees,* 1; C., *mortgagor,* 2.

Recitals. *Recite the mortgage, stating the conveyance and proviso for redemption, setting out the parcels at length,* p. 234; *State of*

Intention to pay off. *mortgage debt,* p. 694, *form* XI.: AND WHAS the sd C. is desirous of paying off the sd principal sum of £——, and of having the sd mortgaged —— and premises released and reassigned in manner hereinafter appearing: NOW

Witnesseth. THIS INDRE WITNESSETH, &c., *consideration and receipt as in Precedent* LXI., the sd A. doth [A. and B. do]

Release. hereby assign and release ALL AND SINGULAR the —— and premises comprised in or expressed to be assigned or granted by the hereinbefore recited indre of mortgage of the —— day of ——, or which are now by any means vested in the sd A. [and B], subject to redemption

Habendum by virtue of the same indre, *Estate clause,* p. 264; To

HAVE AND TO HOLD all the sd premises hereinbefore expressed to be hereby assigned and released UNTO the sd C., his exors, admors, and assigns, freed and discharged, &c., *as in Precedent* LXI., *mutatis mutandis.* [*For a mortgage of a life estate in realty effected by demise, say, and, if other property is comprised in the mortgage, in a separate testatum,* "doth [do] hereby surrender and release unto the sd C., and his assigns, ALL AND SINGULAR the hereditaments and premises in the sd recited indre of mortgage of the —— day of —— comprised or expressed to be thereby demised, or which are now vested in the sd A. [and B.] subject to redemption by virtue of the same indre, WITH the rights, members, and appurtenances thereof, *Estate clause*, p. 264, freed and discharged, &c., *as above,* to the intent that the sd term of years created by the sd indre of mortgage may merge and be absolutely extinguished in the reversion of him, the sd C., in the sd premises]. *Covenant by A.* [*and B.*] *against incumbrances*, p. 739.

PREC. LXVI. to mortgagor. Variation.

IN WITNESS, &c.

LXVII.

ENDORSED RECEIPT *on* DISCHARGE *of* EQUITABLE MORTGAGE.

PREC. LXVII.

I, the within named A., *mortgagee,* do hereby acknowledge that I have this day received from the within named B., *mortgagor*, the sum of £—— in full discharge of all principal moneys and interest intended to be secured by the within written memorandum [indre]: And I do hereby release the within mentioned [deeds, writings] —— and premises from all claims and demands under such memorandum [indre].

AS WITNESS my hand, this —— day of ——

LXVIII.

PREC. LXVIII.

APPOINTMENT *of* RECEIVER.

Recitals.

Parties A., *mortgagor*, 1; B., [C., and D.], *mortgagees*, 2; K., *receiver*, 3; *Recite mortgage deed*, p. 692, *setting out the covenant for payment of principal, and interest after default, the conveyance, the proviso for redemption, and any provisions such as the proviso for reduction of interest on punctual payment affecting the rate or time of payment of the interest, the covenant for insurance, and authority to mortgagee to pay premiums on default of mortgagor, describing the parcels as* " the several —— and hereditaments situate in the parishes of ——, and county of ——, a particular and rental whereof is

Agreement.

set forth in the schedule hereto ; " AND WHAS upon the treaty for the mortgage effected by the hereinbefore-recited indre it was agreed that the sd K. should be appointed receiver of the rents and profits of the sd hereditaments and premises, with the powers hereinafter given to him, and that the deed appointing him such receiver should contain such covenants and provisions as are hereinafter contained: NOW

Witnesseth.

THIS INDRE WITNESSETH that in pursuance of the recited agreement, and in consideration of the premises the

Appointment of receiver.

sd A., with the concurrence of the sd B., [C., and D.], doth hereby appoint the sd K., *continue receivership clauses*, p. 726.

IN WITNESS, &c.

Schedule of parcels.

LXIX.

PREC. LXIX.

AGREEMENT *between* MORTGAGEES *and other* PERSONS *interested as to Deposit of* TITLE-DEEDS *with* BANKERS *on behalf of all parties.*

Recitals.

Parties A. and B., *mortgagees*, 1; C. and D., *other parties interested*, 2; E., *mortgagor*, 3: WHAS the several messuages,

lands, and hereditaments mentioned and comprised in the first schedule hereunder written have recently been conveyed by or by the direction of the sd E., unto the sd A. and B., their heirs and assigns, by way of mortgage for securing the sum of £—— and interest : AND WHAS the several deeds, evidences, and writings specified in the second schedule hereunder written relate not only to the sd hereditaments mentioned and comprised in the sd first schedule hereto, but also to certain other hereditaments in or to which the sd C. and D. are interested or entitled, and on the treaty for the sd loan it was agreed that the sd deeds, evidences, and writings should be deposited at the banking house of Messrs. —— at ——, and that such agreements should be entered into in relation to the same as are hereinafter contained, and accordingly the sd deeds, evidences, and writings have been deposited at the sd banking house in a box marked, &c. : NOW THIS INDRE WITNESSETH that it is hereby agreed and declared between and by the parties to these presents, so far as they are respectively authorised or enabled in this behalf, THAT the sd several deeds, evidences, and writings, shall remain in the hands and custody of the sd Messrs. ——, and that the same, or any of them, shall not be removed or withdrawn from their custody by any of the parties hereto, or any person or persons claiming under or in trust for them or him respectively, or any of them, without the previous consent in writing of the others or other of the sd parties, or the person or persons claiming under them or him respectively : BUT NEVERTHELESS the same shall at all times be open to the inspection of all or any of the sd parties hereto, or any person or persons claiming under or in trust for them or him respectively, or their respective solicitors, any of whom shall and may at all times be at liberty to make copies, abstracts, or extracts of or from the same or any of them : AND IT IS HEREBY further agreed and declared that in case at any time or times hereafter it shall be necessary to remove the sd deeds, evidences, and writings, or any of them, in order to produce the same

PREC. LXIX.

Mortgage.

Deeds relate to other hereditaments.

Witnesseth. Agreement.

Deeds to remain at bankers.

But be open to inspection.

Further agreement that deeds may be removed for the purpose

PREC. LXIX of production.

unto or for or on behalf of the sd parties hereto of the first or second parts, or any person or persons claiming under or in trust for them or him respectively, or any of them, or to their or any of their counsel, solicitors, or agents, or in the course of any judicial or other proceedings or otherwise for the manifestation, defence, or support of the estate, title, possession, or charge of them or any of them in to or upon any of the hereditaments to which the sd deeds, evidences, and writings respectively relate; then, and in such case such person or persons as the sd Messrs. —— shall from time to time appoint for that purpose shall attend with all and every or any of the same deeds, evidences, and writings, and produce the same at such time and place and for such purpose as the person or persons requiring such production shall by such notice in writing direct or appoint.

IN WITNESS, &c.

Two Schedules.

LXX.

PREC. LXX.

DEED *for* REDUCING *the* INTEREST *on a Mortgage debt, the* EQUITY *of* REDEMPTION *being in* SETTLEMENT.

Parties, A., B., and C., *mortgagees*, 1; D., *tenant for life of equity of redemption*, 2. *Recite mortgage to A., B., and C., on joint account*, p. 692: *State of mortgage debt*, p. 694:

Recitals.

Title of tenant for life.

AND WHAS, subject to the hereinbefore recited indre of mortgage, and the principal sum of £—— and interest thereby secured, the sd D. is tenant for life of the hereditaments and premises therein comprised:

Witnesseth.

Agreement.

NOW THIS INDRE WITNESSETH, that in pursuance of an agreement in this behalf and in consideration of the premises it is hereby agreed and declared, and they the sd A., B., and C., do hereby for themselves, their heirs, exors, admors,

and assigns, covenant with the sd D. and his assigns, That if the sd D. or his assigns, or any other person or persons for the time being interested in the equity of redemption of the sd mortgaged premises, shall on every half-yearly day on which interest is made payable under the sd indre of mortgage or within fourteen days," &c., *continue provision for reduction of interest on punctual payment*, p. 713, *saying*, "the power of sale comprised in the sd indre of mortgage."

In witness, &c.

PREC. LXX.

For reduction of interest.

LXXI.

UNDERTAKING *of* Mortgagor, *or his* Solicitor, *to pay* Costs *on* Completion *of Mortgage, or on* Security *proving* Defective *as to* Value *or* Title.

PREC. LXXI.

To Messrs. ——

Gentlemen,

I undertake to pay your costs and charges, including surveyors' valuation fees, upon the proposed loan by clients of yours of £——, at £—— per cent. per annum, on security of a freehold estate belonging to me, *or*, "to ——," situate at ——, on completion of the mortgage, or in case the security either as regards value or title shall be such as your clients [as trustees] may be advised that they ought not to accept.

I am, &c.

NOTICES.

I. Notice to obligor of assignment of bond debt.

To A., *obligor*, of &c.

I HEREBY give you notice that by a deed or instrument, dated this —— day of ——, the principal sum of £——, the payment whereof is secured to B., of, &c., his exors, admors, and assigns, by your bond, dated the —— day of ——, together with all interest due and to become due thereon, as from the —— day of —— now last, has been assigned by the sd B. to C., of &c.

Dated the —— day of ——, 18—.

(Signed) D.,
Address.
Solicitor for the sd C.

II. Notice to trustees of settlement of assignment of a reversionary interest thereunder to a purchaser or mortgagee.

To D. and E., the trustees of a settlement, dated, &c., made on the marriage of L., of, &c., and M., his wife, *or*, "of the will and codicils of X., late of, &c., deceased," and all others whom it may concern.

WE do hereby give you notice that by an indre dated, &c., and expressed to be made, &c., *description from parcels, as for instance*, "All the share or interest of the sd A. of or in the trust funds and property comprised in or subject to the trusts of the above mentioned settlement, *or*, (will), expectant on the decease of the survivor of the sd L. and M.," has been assigned by the sd A. to the sd B., his exors, admors,

and assigns, for his and their absolute benefit, *or*, "by way of security, as therein mentioned."

Dated this —— day of ——.

(Signed) C. and D.,

Address.

Solicitors for the sd B.

III. Notice to trustees of will of assignment of share of a residuary legatee to the trustees of his marriage settlement.

To A. and B., the trustees of the will and codicils of X., late of ——, deceased, and all others whom it may concern.

Be pleased to take notice that by an indre, dated &c., and made between, *parties*, the sd C. has assigned unto the sd D. and E., their exors, admors, and assigns, *parcels from assignment, as for instance*, "All his share or interest (whether under any appointment, or in default of appointment), of or in the trust funds or property representing the residuary estate of the sd X.," To hold the same (subject to the prior interests of the sd F., and G., his wife, as thereinbefore appearing in the same premises) unto the sd D. and E., their exors, admors, and assigns, upon the trusts therein mentioned.

Dated this —— day of ——.

(Signed) H. and Co.,

Address.

Solicitors for the sd D. and E.

IV. Notice to insurance office of assignment of a life policy.

To the —— Assurance Society.

We hereby give you notice that by an indre, dated, &c., and made, &c., a certain policy of assurance, effected with you by the sd K., *mortgagor*, on his own life, for the sum of £——, and numbered —— in your books, and all moneys assured by or to become payable under the sd policy, have been assigned by the sd K. to the sd L., his exors, admors, and assigns, absolutely, *or*, "by way of mortgage, as therein

mentioned;" And we request you to give us a written acknowledgment of the receipt of this notice.

Dated the —— day of ——.

(Signed) M. and Co.,

Address.

Solicitors for the sd. L.

v. Notice of intention to pay off a mortgage.

To A., *mortgagee*, of, &c.

I, B., *mortgagor*, do hereby give you notice that I shall, on the —— day of ——, *six months from the date of notice*, pay off all principal moneys and interest secured by an indre of mortgage, dated the —— day of ——, and expressed to be made, &c.

As witness my hand this —— day of ——.

vi. Notice requiring payment of mortgage money.

To A., *mortgagor*, of, &c.

If the owners of the equity of redemption are unknown, or cannot be found, the notice should be addressed, "To all persons interested in the equity of redemption of the property comprised in the indre hereinafter mentioned."

We, B. of, &c., and C. of, &c., *mortgagees*, do hereby give you notice to pay off, on or before the —— day of —— next, the principal moneys and interest due to us on the security of an indre of mortgage, dated, &c., and expressed, &c., and further, that in default of your so doing, we intend to sell the property comprised in such indre, or such portion thereof as we may think necessary.

As witness our hands this —— day of ——.

vii. Notice by 2nd mortgagee to 1st mortgagee.

To A., *mortgagee*, of, &c.

I HEREBY give you notice that I have advanced to K., *mortgagor*, of, &c., the sum of £——, the repayment whereof, with interest, is secured by an indre, dated, &c., on certain, *give sufficient description of the property*, now in mortgage to

you, *or*, "on the —— comprised in a mortgage to you effected by an indre dated, &c."

As witness, &c.

To A., *tenant*, of &c.

VIII. Notice by mortgagee to tenant to pay rent to him.

I, B., *mortgagee*, of &c., do hereby give you notice that I have become entitled as mortgagee by virtue of an indre, &c., to the receipt of the rent of the house, No. —— —— Street, now held by you under Mr. ——, and I require you to pay to me the rent now due, and henceforth to become due, in respect thereof.

As witness my hand this —— day of ——.

IX. Notice of dissolution of partnership.

NOTICE is hereby given that the partnership lately subsisting between us, the undersigned A., B., and C., carrying on business as —— at —— under the style or firm of A. and Co., has this day been dissolved by mutual consent [so far as regards the sd B., who retires from the firm], *or* "has this day determined by effluxion of time." [All debts due to, or owing by, the sd late firm will be received and paid by the sd A. and C., who will continue the sd business under the present style or firm of A. and Co.].

As witness our hands this —— day of ——,

A.
B.
C.

To A., *tenant*, of &c.

X. Notice to quit given by landlord to tenant.

I, B., of, &c. [as agent for and on behalf of C., of, &c.], hereby give you notice to quit and deliver up possession of the —— and premises, situate at ——, in the county of ——, which you hold of me [of the sd C.] as tenant, on the —— day of —— next, *or if the day when the tenancy expires is not known, say*, "at the expiration of the year of your tenancy which will expire next after the —— day of —— next."

As witness my hand this —— day of ——.

XI. Notice to quit given by tenant to landlord.

To A., *landlord*, of &c.

I, B., of &c. [as agent for and on behalf of C., of &c.], hereby give you notice, that I shall [he will] quit and deliver up possession of the —— and premises, situate at ——, in the county of ——, now held by me [him] as your tenant, on the —— day of ——.

As witness my hand this —— day of ——.

XII. Notice by lessor or lessee to determine a 21 years' lease at the expiration of the first 7 or 14 years, pursuant to a power in the lease.

To C., *landlord or tenant, as the case may be.*

In pursuance of a power contained in the indre of lease, dated &c., under which the —— and premises hereinafter mentioned are held, I, A., of &c. [as agent for and on behalf of B.], the owner [of the reversion expectant on the determination] of the term created by the sd lease, do hereby give you notice that it is my intention to determine the sd lease, and to put an end to the term thereby created at the end of the first seven [fourteen] years of the sd term.

As witness my hand this —— day of ——.

XIII. Notice to tenant to repair.

To A., *tenant*, of &c.

I, B., *landlord*, of &c., hereby give you notice that Mr. ——, my surveyor, on the —— day of —— entered upon the messuage known as ——, held by you of me under an indre of lease, dated &c., and examined the condition thereof, and found the defects and wants of repair mentioned in the schedule hereto, and further I require you to repair and make good such defects and wants of repair within —— calendar months, pursuant to the covenants of the sd lease.

As witness my hand this —— day of ——.

XIV. Notice from vendor's solicitor to purchaser to complete purchase.

To A., *purchaser*, of &c.

Be pleased to take notice, that B., of &c., the vendor of the freehold estate and property situate at &c., contracted to be purchased by you by an agreement dated the —— day of —— last, is willing and ready to execute and to cause

and procure all other necessary parties (if any) to concur in a proper conveyance to you, or otherwise as you may direct, of the fee simple of all the hereditaments comprised in the sd contract according to the several conditions and stipulations therein contained or referred to, and that the vendor doth now call upon and require you without further delay to tender such conveyance for execution, and pay the remainder of the purchase or consideration money, together with such interest for the same as may be payable, and further, that the vendor will hold you liable to make good to him such loss, costs, damages, and expenses, as may be incurred by him by reason of the default on your part in performing the sd contract.

As witness my hand this —— day of ——.

(Signed) C.,
Vendor's solicitor.

Witness.

xv. Advertisement of change of surname to be published in a newspaper. (*a*)

I, A. B., *old surname*, of ——, in the county of ——, do hereby give notice, that [in compliance with the will of the late X., of &c., esq., deceased, dated the —— day of ——] I have assumed and intend henceforth upon all occasions and at all times to sign and use and be called and known by the surname of C. [only,] in lieu of and substitution for [*or*, in addition to] my present surname of B., and that such intended change or assumption of name is formally declared and evidenced by a deed poll under my hand and seal, dated this day, and intended to be forthwith enrolled in the Chancery Division of the High Court of Justice. In testimony whereof I do hereby sign and subscribe myself by such my intended future name.

A. [B.] C.

(*a*) A change of surname is now very commonly evidenced by a deed poll enrolled in Chancery, accompanied by an advertisement in the newspapers, unless it takes place in compliance with a condition in a will, or settlement, requiring some other mode of assumption. The deed poll may follow the wording of the advertisement. As to changing a surname, see Davidson's Prec., vol. iii., p. 357, note, 3rd ed.

xvi. Statutory notice to creditors.

Pursuant to an Act of Parliament of the 22nd and 23rd Vic., cap. 35, intituled, "An Act to further amend the law of Property, and to relieve Trustees," Notice is hereby given that all persons having any claims or demands upon or against the estate of K., of ——, in the county of ——, deceased (who died on the —— day of ——, and whose will was proved by ——, of ——, in the county of ——, the sole exor therein named, on the —— day of ——, in [*or*, administration of whose estate and effects was granted to ——, of ——, in the county of ——, on the —— day of ——, by] the —— Registry of the Probate Division of the High Court of Justice), are hereby required to send in the particulars of their debts or claims to the sd exor [admor], at the offices of the undersigned, his solicitors, on or before the —— day of ——; And notice is hereby also given, that after that day the sd exor [admor] will proceed to distribute the assets of the sd K., deceased, amongst the parties entitled thereto, having regard only to the claims of which he shall then have had notice, and that he will not be liable for the assets, or any part thereof, so distributed, to any person of whose debt or claim he shall not then have had notice.

Dated this —— day of ——.

A. and B.,
Address,
Solicitors for the sd exor [admor].

PARTITIONS.

I.

AGREEMENT *for* PARTITION *of* FREEHOLDS, COPYHOLDS, *and* LEASEHOLDS, *by a single* ARBITRATOR. VARIATIONS *where one* SHARE *is* VESTED *in* TRUSTEES, *with power to partition, and where the* CHOICE *of* ALLOTMENTS *is to be made by* LOT, *and where the property is subject to a* MORTGAGE, *and where the partition is of the* SURFACE *only without the* MINERALS (*a*). PREC. 1.

AGREEMENT made this —— day of ——, BETWEEN A., *owner of some shares*, 1; B., *in right of K., his wife, owner of other shares*, 2; [C. and D., hereinafter called the trustees, 3; and E., *tenant for life*, 4:] WHAS the sd A. is entitled to —— undivided shares, and the sd B. is entitled, in right of K., his wife, to —— undivided shares of and in the freehold, copyhold, and leasehold hereditaments hereinafter described; [AND WHAS the remaining —— undivided

Parties.

Recitals.

Title to shares.

(*a*) As to partitions, see 5 Davidson, Prec. 473, 8 & 9 Vic., c. 106, ss. 3 and 4, and as to the doctrine to which the latter enactment has reference, see Co. Lit., 173 b. 174 a. b. In the absence of an express power, trustees cannot join in a partition of the surface without the minerals, or *vice versâ*, without the sanction of the Court, see 25 & 26 Vic., c. 108. If the trustees have not this power, the agreement must be conditional on the approval of the Chancery Division being obtained; see the forms of agreements of this nature under the head AGREEMENTS, pp. 14, 20. As to partitions by the Commissioners under the General Inclosure Acts, see note to the next Precedent. As to partitions by the Court, see the Partition Acts, 1868, 1876, 31 & 32 Vic., c. 40, 39 & 40 Vic., c. 17.

PREC. I.

shares are vested in the trustees under the marriage settlement of the sd E., with power with his consent to concur in a partition of the sd premises, with or without the minerals ;] [AND WHAS the sd hereditaments are subject to a mortgage effected by an indre dated, &c., for £—— and interest at —— per cent. per annum; *State of mortgage debt*, p. 694 :] AND WHAS the sd A. and the sd B. for himself and the sd K., his wife, [and the trustees with the consent of the sd E.] have agreed to make a partition of the sd hereditaments in manner hereinafter appearing : [But it has been agreed that such partition shall include the surface only of the sd lands, and shall not extend to or affect the mines and minerals in, under, or upon the same or any part thereof(*b*)]. NOW IT IS HEREBY AGREED as follows :—

Mortgage.

Agreement for partition.

Partition to be made by arbitrator.

1. M. of ——, hereinafter called the arbitrator, shall forthwith make a partition and division of the freehold, copyhold, and leasehold hereditaments described in the schedule hereto [exclusive of the mines and minerals in, under, or upon the same or any part thereof] into two [three] several allotments, convenient to be held in severalty, and as nearly as may be of equal value, *or*, "equal [*or*, proportionate] respectively in value to the several undivided shares of the sd parties in the sd hereditaments," and, if necessary, shall direct any of the parties to give to any of the other parties a sum of money for equality of partition, and fix the amount to be given.

Arbitrator to make survey, &c.

2. THE ARBITRATOR shall make or obtain such a survey and valuation of the sd hereditaments, and such maps, plans, and schedules thereof, as may appear to him to be necessary or proper for the purpose of the sd partition.

As to mortgage.

[3. THE ARBITRATOR shall direct how the sd mortgage debt and the interest now due and to accrue due thereon shall be borne, and what indemnity in respect thereof shall be given by any of the parties to the others of them.]

(*b*) For a partition excepting underground and not surface minerals, see Precedent V., p. 912.

4. THE ARBITRATOR shall direct how the rent reserved by the sd indre of lease shall be apportioned between the sd allotments, and whether any and what indemnity in respect thereof, and of the covenants contained in the sd lease, shall be given by any of the parties to the others or other of them. PREC. I. Apportionment of rent of leaseholds.

5. As SOON as the partition and division shall have been made, the arbitrators shall direct which of the allotments shall be taken by the respective parties now entitled to the sd undivided shares; [*or*, As SOON as the partition and division shall have been made, the parties now entitled to the sd undivided shares shall draw lots, in such manner as the arbitrator shall decide, for priority of choice between the sd allotments, and shall successively make choice of their respective allotments within such time as the arbitrator shall decide,] and the allotments shall be appropriated accordingly. Allotment to parties.

Here insert any provisions as to title to be shown by the several parties, commencing with the common root of title, see CONDITIONS OF SALE.

6. THE PARTITION shall be completed and carried into effect on the —— day of ——, or such later day as the arbitrator may appoint, on which day the several parties hereto and all other necessary parties, if any, shall respectively execute and do all such assurances and acts as shall be necessary or proper for carrying the same into effect, and any question as to the form and contents of any of such assurances or the acts to be so done shall be determined by the arbitrator, and upon the execution and doing of such assurances and acts, the money, if any, which shall become payable for equality of partition, shall be paid together with interest after the rate of £5 per cent. per annum from the time appointed for the completion of the partition, in case the same shall not be then completed. Completion.

7. THE SAID A. and B. [and E.] shall enter into such covenants for title as are usual in conveyances on sales with such modifications, if any, as the case may require [but the Covenants for title.

PREC. I.

trustees shall not be required to enter into any covenant except the usual covenant against incumbrances.]

Possession and outgoings.

8. THE RESPECTIVE parties shall be entitled to the possession or receipt of the rents and profits of their respective allotments, and shall pay the outgoings in respect thereof from the time appointed for the completion of the partition.

Retention of title deeds.

9. THE ARBITRATOR shall determine which of the parties shall have the custody of such of the muniments of title as relate to both [more than one of] the allotments, and by whom the expense of any covenant for production or attested copies which may be required by the parties shall be borne.

Preparation of deeds.

10. THE ASSURANCE of each allotment and any deed of covenant or other instrument relating thereto shall be prepared by the party to whom the same shall be appropriated.

Costs.

11. THE COSTS of the sd partition, including the remuneration to the arbitrator and the costs of the preparation and execution of these presents and of all assurances and things to be done by virtue of these presents, other than those mentioned in clause 9, and other than the costs incurred by the several parties in making out and investigating the several titles to the sd undivided shares, shall be borne by the several parties in the proportions which shall be determined by the arbitrator [in the proportions following, that is to say, &c.]

Decision to be final.

12. THE DECISION of the arbitrator as to any of the matters aforesd shall be final and absolutely binding on all parties.

Provision for appointment of new arbitrator.

13. IN CASE the arbitrator, or any other arbitrator appointed by virtue of this present clause, shall die, or refuse, or become incapable to act before the matters referred to him shall have been determined, the sd A. and B. [the sd A., B., and E., or any two of them] may forthwith, and in case they shall be unable to agree, the president of the Incorporated Law Society may, on the request of any one of them, nominate some other person to be arbitrator; and

the person so nominated shall, as to all the matters remaining to be determined, have the same powers and authorities as if he had been originally nominated an arbitrator. PREC. I.

As WITNESS the hands of the sd parties.

Schedule of parcels.

II.

AGREEMENT *for* PARTITION *of* FREEHOLDS *to be made by* TWO ARBITRATORS *and effected through the* INCLOSURE COMMISSIONERS. (*c*) PREC. II.

Parties: A., *owner of one undivided moiety*, 1; B., *tenant for life of the other moiety*, 2. WHAS the sd A. is entitled in fee simple in possession to one undivided moiety of the hereditaments described in the schedule hereto, and the sd B. is under an indre dated, &c., being the settlement executed on his marriage, tenant for life in possession of the other undivided moiety of the sd hereditaments: AND WHAS the sd A. and B. are desirous of making a partition of the sd hereditaments: NOW IT IS HEREBY AGREED as follows: Recitals. Title. Agreement.

1. M. of ——, and N. of ——, hereinafter called the arbitrators, *continue as in clause* 1 *of last Precedent, substituting for the last part of the clause*, "and shall determine how any inequality in value shall be compensated." Arbitrators to make partitions.

2. *Clauses* 2 *and* 5 *of last Precedent.*

(*c*) See "The Acts for the Inclosure, Exchange, and Improvement of Lands," 8 & 9 Vic., c. 118, ss. 90 to 94; 11 & 12 Vic., c. 99, ss. 13 and 14; 12 & 13 Vic., c. 83, s. 7; 15 & 16 Vic., c. 79, ss. 17, 30, and 31; 17 & 18 Vic., c. 97, s. 8; 20 & 21 Vic., c. 31, ss. 7 to 11; 22 & 23 Vic., c. 43, ss. 10 and 11; 31 & 32 Vic., c. 89, s. 2; Davidson's Prec., vol. i., part ii., p. 99, note, 4th ed., and see Cooke on the Inclosure Acts. Recourse can be had to the Acts only where the inequality in value does not exceed one eighth, which is to be compensated by a rent-charge.

PREC. II.

Application to Inclosure Commissioners.

3. As soon as the appropriation shall have been made, the sd A. and B. shall forthwith apply to the Inclosure Commissioners for England and Wales for an order of partition under the seal of the sd Commissioners, for the purpose of carrying the sd partition into effect.

Retention of deeds.

4. Each of the parties shall retain all the muniments of title relating to both allotments now in his possession, and shall at his own expense execute the usual covenant for production thereof to the other of them.

Costs.

5. The costs of the sd partition, including the costs of this agreement and of the sd application to the Inclosure Commissioners and the remuneration to the arbitrators, shall be borne by the parties equally.

Decision to be final.

6. *As in last Precedent, clause* 12, *adding*, and in case they shall differ in opinion as to any matter, the same shall be referred to an umpire to be chosen by them before they enter upon the business, and his decision shall be final.

Provision for appointment of new arbitrators.

7. In case the sd M. or any other arbitrator appointed by the sd A. by virtue of this present clause shall die or refuse or become incapable to act before all the matters aforesd shall have been determined, the sd A. may nominate another arbitrator in his place. *Similar power to B. to nominate arbitrator in place of N.;* And every person so nominated, &c., *as in last Precedent, clause* 13. (*d*)

In witness, &c.

Schedule of parcels.

III.

PREC. III.

PARTITION Deed *of* Freeholds *between two* Tenants *in* Common, Joint Tenants, *or* Coparceners.

(*d*) If desired, a clause may be added, limiting the time for completion as in the agreement for an exchange, p. 466, clause 4.

Parties: A., *one co-owner*, 1; B., *another co-owner*, 2; C., *grantee to uses*, 3. *Recite title of A. and B. as tenants in common, joint tenants, or co-parceners to the hereditaments described in the schedules:* AND WHAS the sd A. and B. are desirous of making a partition of the sd pieces of land and hereditaments described in the sd schedules hereto, and they have agreed that the hereditaments comprised in the first schedule hereto shall be taken and enjoyed by the sd A. in severalty, in lieu of his undivided share of the entirety of the sd hereditaments, and that, &c., *premises in second schedule to be taken by B.*, and it has been further agreed that the sum of £—— shall be paid by the sd A. to the sd B. as and for equality of partition: AND WHAS the sd sum of £—— has been paid by the sd A. to the sd B. before the execution hereof, as the sd B. doth hereby acknowledge: AND WHAS the sd A. and B. are desirous that the hereditaments so to be allotted to them respectively shall be conveyed and assured in manner hereinafter appearing; *Recital introductory to covenant for production of deeds*, p. 248: NOW THIS INDRE WITNESSETH that for effecting the sd partition and in consideration of the premises, the sd A. and B., [*if tenants in common or coparceners say*, as and according to their respective shares and interests in the sd hereditaments,] do and each of them doth hereby grant unto the sd C. and his heirs, *Parcels by reference to two schedules; General words*, p. 264; *Estate clause*, p. 264; *Habendum*, UNTO the sd C. and his heirs TO THE USES following, that is to say, AS TO the entirety of the sd —— hereditaments and premises comprised in the sd first schedule hereto, TO THE USE of the sd A., his heirs and assigns for ever, to be henceforth held by him and them in severalty: AND AS to the entirety of the sd —— hereditaments and premises comprised in the sd second schedule hereto, TO THE USE of the sd B., his heirs and assigns for ever, to be henceforth held by him and them in severalty; *Covenants by A. and B. with C. for title as in a conveyance on sale*, p. 273, *form* V.; *Covenant for production of deeds*,

PREC. III.

Recitals.

Desire to make partition.

Sum to be paid for equality.

Payment.

Mode of assurance.

Witnesseth.

Grant.

As to one part.

To use of A. in severalty.

As to other part.

To use of B. in severalty.

PREC. III.

including the partition deed unless it is executed in duplicate, p. 288.

IN WITNESS, &c.

Two Schedules.

IV.

PREC. IV.

CONVEYANCE *on a* PARTITION *of* FREEHOLDS *to a* MARRIED WOMAN, *a* SUM *being paid for* EQUALITY.

Recitals.

Parties: A., *surviving trustee of legal estate*, 1; B., 2; C., 3; D., and E. *his wife*, 4. *Recite will of X. devising his real estate to A. and L. in trust for K. for life, and after his death in trust to sell and divide proceeds among his children equally;*

Family.

Death of testator; Probate; Deaths of L. and K.: AND WHAS the sd K. had issue three children and no more, namely, the sd B., C., and E., all of whom have attained the age of 21 years;

Real estate belonging to testator.

AND WHAS the real estate to which the sd testator was entitled at the time of his death, consisted of the freehold pieces of land, messuages, and hereditaments hereinafter expressed to be hereby granted, and certain other freehold hereditaments situate at —— and ——:

Election not to convert, and agreement.

AND WHAS the sd B., C., and D., and E. his wife, have respectively elected to take the sd hereditaments and premises as real estate discharged from the trust or direction for sale contained in the sd will as aforesd, which election is intended to be testified by their respective execution of these presents and of the indres hereinafter recited and the acknowledgment of such last-mentioned indres by the sd E., (*a*) and they have also agreed to make a partition of the sd premises in manner hereinafter mentioned, that is to say, that the sd hereditaments situate at ——, which are valued at £——, shall be taken by the sd B. in severalty, and that the sd

(*a*) See *Franks* v. *Bollans*, L. R. 3 Ch. Ap. 717

hereditaments situate at ——, which are valued at £——, shall be taken by the sd C. in severalty, and that the sd hereditaments hereinafter expressed to be hereby granted, which are valued at £——, shall be taken by the said E. in severalty, and that the sd D., and E. his wife, shall pay the sum of £—— for equality of partition as follows, namely, £—— part thereof to the sd B., and £—— residue thereof to the sd C.: AND WHAS the sd hereditaments situate at —— are intended to be conveyed to the sd B. in severalty by an indre bearing even date herewith and expressed to be made, &c., and the sd hereditaments situate at —— are intended to be conveyed to the sd C. in severalty by another indre bearing even date herewith and expressed to be made, &c.; *Recital introductory to covenant for production of deeds*, p. 248. NOW THIS INDRE WITNESSETH that in consideration of the conveyances intended to be effected by the sd respective indres of even date herewith, and in consideration also of the respective sums of £—— and £—— upon the execution hereof paid to the sd B. and C. respectively by the sd D., and E. his wife, *receipt by B. and C. respectively*, the said A. doth hereby at the request and by the direction as well of the sd B. and C. as of the sd D., and E. his wife, grant, and the sd B. and C., according to their respective undivided shares, estates, and interests in the sd premises do respectively hereby grant and confirm unto the sd E., her heirs and assigns, *Parcels*, p. 251; *General words*, p. 264; *Estate clause*, p. 264; *Habendum*, UNTO AND TO THE USE of the sd E., her heirs and assigns, to the intent that the entirety of the same premises may be henceforth vested in the sd E., her heirs and assigns in severalty; *Covenant by A. with E. against incumbrances*, p. 284; *Covenants by B. and C. with E. for title*, p. 273; *Covenant for production of deeds*, p. 290.

IN WITNESS, &c.

PREC IV.

Conveyances to B. and C.

Witnesseth.

Grant.

To use of married woman in fee.

Covenants.

V.

PREC. V.

DEED *of* PARTITION *of* FREEHOLDS, COPYHOLDS, *and* LEASEHOLDS, *with the* EXCEPTION *of the* MINERALS *under part of the* FREEHOLDS. ONE THIRD *belonging to an* ABSOLUTE OWNER, *another* THIRD *being in* STRICT SETTLEMENT, *and the remaining* THIRD *being vested in* TRUSTEES *for* SALE, *the* TRUSTEES *in each case having a* POWER *of* PARTITION, PART *of the* PROPERTY *having been* EXCHANGED. *The* PARTITION *is effected by* MUTUAL CONVEYANCES. VARIATIONS *where the* FREEHOLDS *and* LEASEHOLDS *are* CONVEYED *to a* PROVISIONAL TRUSTEE *upon trust to reconvey.*

Parties: A., *owner of one share*, 1; B. and C., *trustees of strict settlement of another share*, 2; D., *tenant for life under strict settlement*, 3; E. and F., *trustees for sale of remaining share*, 4; G., and H. his wife, *cestuis que trust under last-*

Recitals. *mentioned settlement*, 5; K., 6. *Recite will of X. devising the freehold, copyhold, and leasehold hereditaments specified in the first and second schedules, the first part of the third schedule, and the fourth schedule, to A., D., and G. as tenants in common or joint tenants; Death and probate; Three several admittances of A., D., and G. to an undivided third of the copyholds, or as the case may be; An exchange whereby the hereditaments in the fourth schedule were given in exchange for those in the second part of the third schedule; Strict settlement of D.'s undivided share under which D. is tenant for life, and B. and C. have a power of partition with or without the minerals* (*a*), *exercisable at request of D.; Conveyance of G.'s undivided share to E. and F. in trust for sale with a power of partition with or without the minerals* (*a*), *exercisable with consent of G. and H.*

(*a*) See note, p. 903.

PREC. V.

AND WHAS the sd parties hereto of the first five parts are mutually desirous of making a partition of the sd hereditaments described in the sd first, second, and third schedules hereto, except as hereinafter mentioned, and in furtherance of such desire a survey and division has been made thereof, and the hereditaments described in the first schedule hereto have been set apart as the share to be allotted to the sd A., and held by him, his heirs, exors, admors, and assigns respectively, according to the nature and tenure of the property, in severalty in lieu and satisfaction of his sd undivided third part of the whole of the sd hereditaments, and the hereditaments described in the second schedule hereto have been set apart as the share to be allotted in severalty to the uses of the sd indre of, &c., *the strict settlement*, in lieu and satisfaction of the undivided third part of the whole of the sd hereditaments which is now subject to the uses of the same indre, and the hereditaments described in the third schedule hereto have been set apart as the share to be allotted to the sd E. and F., and held by them, their heirs, exors, admors and assigns respectively, according to the nature and tenure of the property, in severalty upon the trusts declared by the sd indre of, &c., *the conveyance in trust for sale*, in lieu and satisfaction of the undivided third part of the whole of the sd hereditaments which is now vested in the sd E. and F. as such trustees as aforesd; But it has been agreed that the partition so to be made shall include the surface only of the freehold hereditaments described in the first schedule hereto, and shall not extend to or affect the mines and minerals in, upon, or under the same or any part thereof, [except such stone, clay, brick earth, gravel, sand, and other minerals and substances as can be got by surface working as hereinafter mentioned]: AND WHAS it has been further agreed that such partition shall be effected in manner hereinafter appearing: NOW THIS INDRE WITNESSETH that for effecting the partition of the sd hereditaments and in consideration of the assurances intended to be hereby

Desire to make partition.

Allotments.

Agreement as to minerals.

Witnesseth.

PREC. V.

made by the sd A. and by the sd E. and F. respectively, and of the premises, the sd B. and C. in exercise and execution of the power for this purpose given or reserved by the sd indre of, &c., *the strict settlement*, and of every or any other power enabling them in this behalf and at the request of the sd D., do hereby absolutely revoke and make void ALL THE uses, trusts, limitations, powers, provisoes, and declarations in and by the sd indre of, &c., declared and contained concerning the sd one undivided third part therein comprised of and in ALL AND SINGULAR the —— and hereditaments of whatsoever tenure described and comprised in the sd first, second, and third schedules hereto, and of and in the rights, easements, and appurtenances thereto belonging, EXCEPT as to the mines and minerals in, upon, or under such of the sd hereditaments and premises described and comprised in the first schedule hereto as are of freehold tenure or any part thereof, [other than such stone, clay, brick earth, gravel, sand, and other minerals and substances as can be got by quarrying or surface workings and without underground workings,] AND DO hereby direct and appoint that the sd undivided third part of and in all the sd hereditaments and premises and the appurtenances thereof, except as aforesd, shall henceforth go and remain TO THE USES, upon the trusts, and with and subject to the powers and provisions hereinafter expressed concerning the same respectively. AND THIS INDRE ALSO WITNESSETH that for further effecting the sd partition, the sd A. [*if B. and C. take any estate, say*, and the sd B. and C. as such trustees as aforesd, at the request of the sd D.] and the sd E. and F., as such trustees as aforesd, at the request of the sd G. and H., do and each of them doth, according to his and their respective estates and interests, hereby grant and confirm unto the sd K. and his heirs, ALL AND SINGULAR the —— and hereditaments specified in the first, second, and third schedules hereto which are of freehold tenure ; *General words*, p. 264 ; *Estate clause*, p. 264 ; BUT EXCEPT and reserved out of the assurance and partition intended to be hereby made, all mines and

Revocation of uses of settlement.

Exception of minerals.

New appointment.

To uses after declared.

Further witnesseth.

Grant.

Freeholds.

Exception of minerals.

minerals in, upon, or under such of the sd freehold hereditaments and premises as are described and comprised in the first schedule hereto, or any part thereof, [other than such surface stone, &c., *as above*, and other minerals and substances as aforesd :] TO HAVE AND TO HOLD all the sd premises hereinbefore expressed to be hereby granted UNTO the sd K. and his heirs, TO THE USES upon the trusts and with and subject to the powers and provisions hereinafter expressed concerning the same respectively, that is to say, AS TO and concerning the entirety of such of the sd freehold premises as are described and comprised in the first schedule hereto, except as aforesd, TO THE USE of the sd A., his heirs and assigns for ever, to be henceforth held by him and them in severalty, AND AS TO and concerning the entirety of such of the sd freehold premises as are described and comprised in the second schedule hereto, TO THE USES, upon the trusts, and with and subject to the powers and provisions declared and expressed in and by the sd indre of, &c., *the strict settlement*, concerning the sd undivided third part therein comprised of and in all the sd freehold premises, or such of the same uses, &c., as are subsisting and capable of taking effect, and to be henceforth held in severalty accordingly : AND AS TO and concerning the entirety of such of the sd freehold premises as are described and comprised in the sd third schedule hereto, TO THE USE of the sd E. and F., their heirs and assigns, for ever, BUT UPON the trusts, &c., *of the conveyance in trust for sale*, concerning, &c., *as above :* AND THIS INDRE ALSO WITNESSETH that for further effecting the sd partition each of them, the sd, *tenants on the roll*, so far only as relates to the undivided third share which is vested in him as hereinbefore is recited in the copyhold hereditaments hereby covenanted to be surrendered, doth hereby for himself, his heirs, exors, and admors, covenant with the sd A., his heirs, exors, admors, and assigns, and also separately with the sd B. and C., their heirs, exors, admors, and assigns, and also separately with the sd E. and F., their heirs, exors, admors,

Habendum.

To uses.

As to part.

To absolute owner.

As to other part.

To uses of strict settlement.

As to other part.

To use of trustees for sale.

Further witnesseth.

PREC. V.

and assigns, THAT they, the sd respective covenanting parties, and all other necessary parties, if any, will forthwith, at the cost of the respective persons for whose benefit the respective surrenders are to be made, *continue covenant to surrender*, p. 298, "ALL AND SINGULAR the —— and hereditaments specified in the first, second, and third schedules hereto, which are of copyhold tenure," &c.: To the USES following, that is to say, As TO the entirety of the —— and hereditaments specified in the first schedule hereto which are of copyhold tenure, To THE USE of the sd A., his heirs, &c., *add*, "and so that the same shall henceforth be held in severalty accordingly," AND AS TO the entirety, &c., *as above of copyholds in second schedule to the use of B. and C., adding*, "UPON THE TRUSTS and with and subject to the powers and provisions by the sd indre of, &c., declared and expressed concerning the undivided third part thereby covenanted to be surrendered of the sd copyhold premises or such of the same trusts, &c., *as in case of freeholds*, and so that the entirety of the sd copyhold premises comprised in the sd second schedule shall henceforth be held in severalty accordingly:" AND AS TO, &c., *similar declaration of uses, &c., as to copyholds in third schedule in favour of E. and F.:* AND the sd last mentioned covenanting parties do hereby respectively declare that in the meantime and until the sd several surrenders shall be made by them respectively pursuant to the covenants hereinbefore contained, they, the sd covenanting parties respectively and their respective heirs, will stand possessed of such of the sd copyhold premises as are specified in the first schedule hereto in trust for the sd A., his heirs and assigns, and of such of the same premises as are specified in the second schedule hereto in trust for the sd B. and C., their heirs and assigns, and of such of the same premises as are specified in the third schedule hereto in trust for the sd E. and F., their heirs and assigns: AND THIS INDRE ALSO WITNESSETH that for further effecting the sd partition the sd B. and C., as such trustees as aforesd, at the request of

Covenant to surrender.

Copyholds.

To uses.

As to part.

To use of absolute owner.

As to other part.

To use of trustees of strict settlement.

As to other part to trustees for sale.

Declaration of trust till surrender.

Further witnesseth.

the sd D., and the sd E. and F. as such trustees as aforesd, at the request of the sd G. and H., do, and each of them doth, hereby assign unto the sd A.(*b*), his exors, admors, and assigns, ALL THOSE the respective undivided third parts or shares which are vested in the sd B. and C., and the sd E. and F. respectively, of and in all such of the sd —— and hereditaments specified in the sd first schedule hereto as are of leasehold tenure, with the rights, easements, and appurtenances thereof; *Estate clause*, p. 264; *Habendum to A. subject to rent and covenants*, p. 267, No. VIII., to the intent that the entirety of the same premises shall henceforth be held in severalty accordingly (*c*); *Similar assignments to B. and C. and E. and F.*, UPON SUCH TRUSTS, &c., *as above; Covenant by B. and C.*, with the sd A., his heirs, exors, admors, and assigns, and also separately with the sd E. and F., their heirs, exors, admors, and assigns, *and by E. and F., with A., his heirs, &c., and also separately with B. and C., their heirs, &c.*, that they, the sd covenanting parties respectively, have not, &c., *remainder of covenant against incumbrances, see* p. 285, *forms* III. *and* XIII.: AND EACH of them, the sd A., D., and G., doth hereby for himself, his heirs, exors, and admors, so far as regards the acts and defaults of himself and the sd X., *the testator*, and of persons claiming under or in trust for them

Assignment. Leaseholds.

Covenant by trustees against incumbrances.

Covenant by persons beneficially interested for title.

(*b*) It will sometimes, in a case like the present, be convenient that the freeholds and leaseholds should be conveyed to K. upon trust to re-convey each lot to the person to whom it is allotted, see APPOINTMENTS OF NEW TRUSTEES, Prec. XI., p. 111. The reconveyance would be in the form of Prec. XII., p. 111, *mutatis mutandis*, and the covenants for title and production would be entered into with K.

(*c*) In the present case it is assumed that the leaseholds in the different schedules are held under separate leases. If they are held under the same lease, and are divided equally, each habendum must be made "subject to the payment of one equal third part of the sd rent of £——, and to the covenants by the lessee and conditions in the sd indre of lease so far as the sd covenants and conditions relate to the sd premises comprised in the —— schedule hereto."

PREC. V.

respectively, but not for the acts and defaults of the others of them, the sd covenanting parties, or of persons claiming under or in trust for them, or any of them, and so that the liability of the sd respective covenanting parties under this present covenant shall be limited to one equal third share only of and in the sd freehold, copyhold, and leasehold premises comprised in the sd first, second, and third schedules hereto, and so that the benefit of this covenant as regards all the hereditaments and premises comprised in the first schedule hereto shall enure to the sd A., his heirs, exors, admors, and assigns, and that the benefit thereof as regards all the hereditaments and premises comprised in the second schedule hereto shall enure to the sd B. and C., their heirs, exors, admors, and assigns, and the benefit thereof as regards all the hereditaments and premises comprised in the third schedule hereto shall enure to the sd E. and F., their heirs, exors, admors, and assigns, covenant with the sd A., his heirs, exors, admors, and assigns, and also separately with the sd B. and C., their heirs, exors, admors, and assigns, and also separately with the sd E. and F., their heirs, exors, admors, and assigns, *continue covenants for title*, p. 280, *form* IX., *mutatis mutandis, and with the modification for several covenanting parties, see* p. 273, *form* IV., *omitting the covenants that lease is good and that rent and covenants have been paid and performed; Covenant by A. with B. and C., and also separately with E. and F. to pay rent, &c., as to leases affecting property in the first schedule*, p. 286, *form* XIV., *mutatis mutandis; similar covenants by B. and C. as to leases in second schedule, and by E. and F. as to leases in third schedule* (*d*): PROVIDED ALWAYS, and it is hereby

Covenants for payment of rent.

Mines to belong to persons now entitled.

(*d*) If one lease is allotted equally, substitute for these covenants a covenant by A. with B. and C., and E. and F., "that he, the sd A., his exors, &c., will henceforth during the sd term pay one equal third part of the rent reserved by the sd lease, and perform and observe the covenants henceforth to be

agreed and declared that all the mines and minerals in, upon, or under such of the sd hereditaments and premises specified in the first schedule hereto as are of freehold tenure [other than such surface stone, minerals, and substances as aforesd] shall continue to be held and enjoyed by the persons interested therein in the same manner as if the partition intended to be hereby effected had not been made (*e*).

IN WITNESS, &c.

Four Schedules.

performed and observed, in respect of such of the sd premises thereby demised as are specified in the 1st schedule hereto," and similar covenants by B. and C. as to leaseholds in the 2nd schedule, and by E. and F. as to leaseholds in the 3rd schedule.

(*e*) The partition deed may be executed in triplicate, otherwise the party who retains it must enter into the usual covenant for its production to the other parties. One or more covenants for production of the other muniments of title retained by the respective parties will also probably be required.

PARTNERSHIP (*a*).

CLAUSES (*b*).

Duration and style of partnership for two partners.

I. THE SD A. and B. will become and remain partners in the trade, *or*, "profession," or business of ——, [in continuation of the business carried on for many years by the sd A.] from the —— day of ——, during the term of —— years [*or*, *if for life*, during their joint lives] under the style or firm of ——, [subject nevertheless to determination as hereinafter provided].

The same for three or more partners.

II. The sd A., B., C., and D., and the survivors of them, will become and remain partners in the trade, *or*, "profession," or business of —— [in continuation of the business carried on for many years by the sd A. and B.], from the —— day of ——, during the term of —— years, if they or any two of them shall so long live, [*or*, *if for life*, during so long as they or any two of them shall live] under the style or firm of —— [subject nevertheless to determination as hereinafter provided.]

Power to determine partnership by notice.

III. ANY PARTNER may determine [retire from] the partnership on or at any time after the —— day of ——18——, on giving not less than six calendar months' previous notice

(*a*) See 5 Davidson's Prec., 2nd edition, 768; Lindley on Partnership; Pollock on Partnership.

(*b*) The forms under this head are, for the most part, adapted to a partnership between three or more, but the alterations for two partners will be obvious.

in writing to the other partners of his intention in that behalf, or leaving such notice at the counting-house, *or*, "office," of the partnership, and at the expiration of such notice the partnership shall determine accordingly [so far as regards the partner giving or leaving such notice].

Power to determine partnership as to one partner.

IV. THE SD A. and B., or such one of them as shall for the time being remain a partner, may at any time terminate the sd partnership so far as regards the sd C. on giving to him not less than —— calendar months' notice in writing, or leaving such notice at the counting-house, *or*, "office" of the partnership, or on paying him the sum of £—— in lieu of such notice, in which case the partnership shall, as regards the sd C., absolutely cease and determine on the expiration of such notice, or on the payment of such sum, as the case may be, [and the sd C. shall have the like right of terminating the sd partnership as regards himself, on giving the like notice to the sd A. and B., or such one of them as shall for the time being remain a partner, or leaving such notice at the sd counting-house, *or* "office".]

Death, &c., of one partner not to dissolve partnership.

V. THE DEATH [or retirement] of any partner shall not dissolve the partnership between the remaining partners.

Place of business.

VI. THE BUSINESS of the partnership shall be carried on at ——, or at such other place as the partners shall from time to time determine.

Capital.

VII. THE CAPITAL of the partnership shall be the sum of £——, to be contributed by the sd partners in equal shares, [in the shares or proportions following, namely, the sum of £—— by the sd A., the sum of £—— by the sd B., and the sum of £—— by the sd C.]

Capital where no amount fixed.

VIII. THE CAPITAL of the partnership shall consist of such sum or sums of money as shall from time to time be required for carrying on the sd business with advantage, and shall be contributed, &c., *as in last form.*

Increase of capital.

IX. IF AT any time or times hereafter it shall be determined [by a majority of the partners] to increase the capital, the additional capital required shall, unless otherwise agreed, be advanced by the partners [for the time

being] in equal shares [in the proportions in which they shall then be respectively entitled to the net profits of the sd business.]

Additional capital to be brought in by any one partner.

X. If any partner shall, with the consent of the [majority of the] other partners, bring in additional capital, or leave in the business as capital any part of the net profits carried to his credit at any annual general account, the same shall be considered as a debt due to him from the partnership, and shall bear interest after the rate of £—— per cent. per annum, payable half-yearly, but such additional capital shall not be drawn out by him without giving —— calendar months' written notice of his intention so to do to the other partners, or leaving such notice at the counting-house, *or*, "office," of the partnership, and he shall be bound to draw out the same on a like notice being given to him by the other partners, or left as aforesd, and at the expiration of such last-mentioned notice interest shall cease to be payable thereon.

Interest on capital.

XI. Each partner shall be credited in the books of the partnership with interest at the rate of £—— per cent. per annum on his share of the capital for the time being, [*or*, on the excess of his capital for the time being over and above the sum of £——,] inclusive of any further capital which may hereafter be brought in by him with the consent of the other partners, and such interest shall be paid to him on the —— day of —— in every year before any division of profits is made.

One partner to be credited with value of stock-in-trade, &c., as part of his capital.

XII. The stock in trade and plant belonging to the sd business at the commencement of the partnership [the particulars whereof are entered in the books of the sd business] shall be valued by a competent valuer, [shall be taken to be of the value of £——], and shall become the property of the partnership, and the value thereof shall be credited to the sd A. in the books of the firm as part of the capital brought in by him, and the capital of the firm shall consist of such sum, and of the further sum of £—— to be brought in, &c.

Lease of business premises vested in one partner to be held in trust for firm.

XIII. THE SD A., by whom the house and offices in which the sd business is carried on are held for the residue of the term of —— years from the —— day of ——, granted by an indre of lease dated, &c., at a rent of, &c., shall stand possessed thereof in trust for the firm, and shall be indemnified by the firm against such rent, and the covenants, and conditions contained in the sd lease, and the sum of £—— being the estimated or agreed value of the sd lease shall be credited to the sd A. in the books of the partnership as part of his capital therein, and the capital of the partnership shall consist of such sum, and of the further sum of £—— which shall be brought in, &c.

Provision for house of business and office furniture remaining property of one partner, subject to the user thereof by the firm at a rent.

XIV. THE [LEASE of the] house, offices, and buildings at ——, in which the sd business is now carried on, and the office furniture and fittings therein, which are respectively the property of the sd A., shall so remain, but the sd partnership shall have the right of retaining the sd house, offices, and buildings, furniture and fittings, for the purposes of the sd business during so long as the partners for the time being shall think fit, and shall during such period pay [the rent reserved by the lease under which the sd A. holds the sd house and premises, and] all rates, taxes, and expenses payable in respect thereof, and shall pay an [additional] rent of £—— per annum to the sd A., his exors, admors, and assigns, for the use of the sd house, offices, furniture, and premises.

Employment of capital.

XV. THE SD capital, and the receipts and earnings of the sd business, including the premium paid for any apprentice [articled clerk] taken by any partner, shall be employed in the sd business.

Bankers.

XVI. THE BANKERS of the partnership shall be Messrs. ——, or such other bankers as the [majority of the] partners shall from time to time determine, and all moneys [notes, bills, and securities] belonging to the partnership, except such moneys as are required for current expenses, shall be paid into [and deposited with] the sd bank.

Provision as to moneys received and paid on account of partnership.

XVII. ALL MONEYS which shall from time to time be received by the partners or any of them for or on account of the partnership shall be immediately paid to the bankers for the time being of the partnership in the same drafts, cheques, bills, or cash in which the same are received, and all disbursements for or on account of the partnership shall invariably be made by draft on such bankers or through the medium of the cash clerk of the partnership.

Outgoings.

XVIII. THE RENT of, and expenses of repairs, alterations, and improvements of any houses, buildings, or offices from time to time belonging to or used for the purposes of the sd business, and all rates, taxes, assessments, expenses of insurance against fire, and other outgoings for or in respect of the same, and the salaries and wages [and maintenance] of all clerks, travellers, apprentices, and persons employed in the sd business, and all expenses, losses, and damages which shall be incurred in carrying on the same or in anywise relating thereto, and the interest on the capital payable to the respective partners, shall be paid out of the receipts and earnings of the sd business, and in case of deficiency thereof then by the sd partners in equal shares, [in the shares in which they shall for the time being be entitled to the net profits of the sd business].

Profits.

XIX. THE PARTNERS shall be entitled to the net profits of the sd business in equal shares [in the shares following, that is to say, the sd A. to two equal third parts thereof, and each of them the sd B. and C. to one equal sixth part thereof,] and the sd net profits shall be divided between the partners as soon after the end of each year of the partnership as the general annual account shall have been taken and settled as hereinafter provided.

Minimum sum guaranteed to one partner.

XX. PROVIDED ALWAYS that in case the share of the sd C. in the sd net profits shall in any year or years be less than £——, such share shall in any or every such year be made up to £—— by the other partners or partner, the amount required for that purpose to be contributed by such

other partners if more than one in the shares in which they shall be entitled to share in the sd net profits.

Option to one partner to purchase a further share of the business.

XXI. The sd C. shall have the option, to be signified to the other partners or partner on or before the —— day of ——, of purchasing a further share not exceeding one —— share of the sd business and the net profits thereof, as from such day, at a price to be —— years' purchase calculated on an average of such net profits from the commencement of the sd partnership up to the then last general annual account, and the sum so paid shall be divided between the sd A. and B. in the shares following, &c., and after such purchase the share of the sd C. in the net profits shall be increased by the addition of the further share purchased by him, and the shares of the sd A. and B. in the net profits shall be correspondingly reduced, but so that their shares shall continue to bear the same proportion to each other as their original shares.

Drawings.

XXII. EACH PARTNER, [the sd A.,] may draw out of the sd business a sum not exceeding £——, [the sd B. a sum not exceeding £——, and the sd C. a sum not exceeding £——] per month on the —— day of each month, in anticipation of his share of the net profits for the current year; but in case in any year the amount so drawn out by any partner shall, on taking the general account for such year, be found to be in excess of his share of the net profits for such year, then immediately after such account shall have been taken and settled the excess so drawn out shall be refunded.

Surplus profits above authorised drawings to be capitalized.

XXIII. If the share of any partner in the net profits for any year as ascertained upon taking the annual general account shall exceed the amount which he shall be for the time being authorised to draw out during that year as provided by the last preceding clause (whether actually drawn out or not), the surplus of such share over and above the amount so authorised to be drawn out shall be retained and added to his share in the capital of the partnership until the total capital shall amount to the sum £——, and each partner shall be entitled to receive interest at the rate of £——

per cent. per annum on the sums so retained and carried to his credit as capital.

Sleeping partner.

XXIV. THE SD A. shall not be required to [and shall not] interfere with the carrying on, management, or conduct of the sd business, and shall not during the continuance of the partnership, either alone or in partnership with any other person or persons, carry on or be concerned directly or indirectly in the business of ——, and shall not sign the name of the sd firm.

As to residence.

XXV. THE SD A. shall reside at the sd dwelling-house at ——, where the sd business is to be carried on, free of rent, rates, taxes, assessments, and expenses of insurance, which shall be paid out of the assets of the sd firm, provided that he shall, on giving three calendar months' notice in writing to the other partners, be at liberty to lodge out of the sd house, and in such case shall be allowed the annual sum of £—— out of the assets of the firm in lieu of such lodging.

Attention to business.

XXVI. EACH PARTNER [other than the sd K., *sleeping partner*], shall, at all times during the partnership, devote the whole of his time and attention to the sd partnership business, and diligently and faithfully employ himself therein, and carry on the same for the greatest advantage of the partnership; *if desired, insert provisions as to holidays.*

The same, when some partners not to be bound to attend to business.

XXVII. *C. to give whole time, &c., as in last clause.* The sd B. shall give such an amount of supervision and attention to the sd business as may be necessary for the efficient management thereof, but the sd A. shall not be obliged to attend to the sd business any further than he shall think proper, [but in case he shall cease altogether to take any active part therein, then and from thenceforth he shall give up one equal —— share of the net profits thereof, which shall accrue to the other partners or partner, and if there shall be more than one shall be divided between them in proportion to their original shares therein], and the sd A. shall thenceforth be in the position of a sleeping partner in the sd business.

Not to en-

XXVIII. NO PARTNER [except the sd A.] shall engage in, or

undertake any trade, business, or manufacture, save as aforesd, [or become a director of any joint stock company], without the consent in writing of the other partners or partner. Engage in any other business.

XXIX. ALL CHEQUES, bills, and other writings, pledging the credit, or affecting the property of the partnership, shall be signed by the sd A. or B., and not otherwise. Cheques.

XXX. NO PARTNER shall, without the consent of the other partners or partner, draw, accept, or sign any bill of exchange or promissory note, or contract any debt on account of the partnership, except in the usual and regular course of business (*a*). Not to pledge credit of firm.

XXXI. NO PARTNER shall lend any money or give credit to or have any dealings on behalf of the partnership with any person whom the other partners or partner shall previously have forbidden him to trust or deal with, and if he shall act contrary to this article he shall repay to the partnership any loss which may have been incurred thereby. Not to give credit when forbidden.

XXXII. NO PARTNER shall buy, order, or contract for any goods or article exceeding the value of £—— without the previous consent in writing of the other partners or partner, and in the event of any partner so doing the other partners or partner shall have the option either to take the goods or articles so bought, ordered, or contracted for, on behalf of the partnership, or to let the same remain and be for the separate use of the partner so buying, ordering, or contracting, in which case he shall pay for the same out of his own moneys. No contract to exceed a certain amount.

XXXIII. NO PARTNER shall hire or dismiss, except in case of gross misconduct, any clerk [traveller] or person in the employment of the partnership, or take any apprentice, without the consent of the other partners or partner. Hiring clerks, &c.

XXXIV. NO PARTNER shall, without the previous consent in writing of the other partners or partner, become bail, surety, or security, for any person [or subscribe any policy of insurance]. Not to become surety &c.

(*a*) See also the clause in the note to Precedent II.

To be just.

XXXV. EACH PARTNER shall be just and faithful to the other partners or partner in all transactions relating to the business of the partnership, and shall give a true account of the same to them when and so often as the same shall reasonably be required.

To give information.

XXXVI. EACH PARTNER shall, upon every reasonable request, inform the other partners or partner of all letters, accounts, writings, and other things which shall come to his hands or knowledge concerning the business of the partnership.

Journeys.

XXXVII. NO PARTNER shall take or go any journey or voyage on account of the firm without the consent of the other partners [and in the event of any partner so doing he shall forfeit the sum of £——, to be forthwith paid by him to the other partners in equal shares: and if any partner shall at any time take or go any voyage or journey on account of the firm, with such consent, he shall be allowed his reasonable expenses of travelling and subsistence during such voyage or journey].

Not to employ assets of firm improperly.

XXXVIII. NO PARTNER shall employ any of the moneys, goods, or effects, of the partnership, or engage the credit thereof, except upon the account and for the benefit of the partnership.

Not to assign share.

XXXIX. NO PARTNER shall, without the previous consent in writing of the other partners or partner, assign his share or interest in the partnership [except that any partner may introduce a son or nephew into the firm, and assign the whole or any part of his share to him as hereinafter provided].

Not to assign share without giving option of purchase to other partners.

XL. ANY PARTNER shall be at liberty to sell his share in the partnership, provided he shall previously have offered such share to the other partners or partner upon the same terms, and they or he shall have refused or neglected for one calendar month to accept such offer.

Not to cause the property of the firm to be taken in execution.

XLI. NO PARTNER shall do or knowingly suffer anything whereby the property of the partnership may be seized, attached, extended, or taken in execution.

XLII. No PARTNER shall, without the consent of the other partners or partner, compound, release, or discharge, any debt which shall be due or owing to the partnership, without receiving the full amount thereof. Not to compound debts.

XLIII. EACH PARTNER shall punctually pay and discharge his present and future separate debts and engagements, and shall at all times keep indemnified the other partners, and their respective exors and admors, and the property of the partnership, against the same, and all actions, proceedings, claims, and demands, in respect thereof. Each partner to pay his private debts.

XLIV. PROPER BOOKS of account shall be kept by the sd partners, and entries made therein of all such matters, transactions, and things, as are usually entered in books of account kept by persons engaged in concerns of a similar nature, [and the same shall be posted up under the personal superintendence of ——]; The sd books of account, and all letters, papers, and documents, belonging to the partnership [except such as are to be kept at the bankers] shall be kept at the counting-house, *or*, " office " of the partnership, and each partner shall at all times have free access to examine and copy the same. Accounts to be kept.

XLV. On the —— day of ——, 18—, and on every subsequent —— day of ——, a general account shall be taken of the assets and liabilities of the partnership, and of all dealings and transactions of the partnership during the then preceding year [or, in the case of the first of such accounts, since the commencement of the partnership,] and of all matters and things usually comprehended in accounts of a like nature, taken by persons engaged in a like business, and in taking such account a just valuation shall be made of all items requiring valuation [including the good-will of the sd business, which, unless otherwise agreed, shall be taken to be equivalent in value to [three] times the average net yearly profits of the sd business during the three preceding years, or from the commencement of the sd partnership, if less than three years]; Such general account shall be entered in a book, which shall be signed by all the Annual general account.

partners, and when so signed as aforesd shall be binding on all the partners, save that if any manifest error shall be found therein, and signified by any partner to the other partners within —— calendar months after such signature, the same shall be rectified.

Ordinary provision for winding up on dissolution.

XLVI. UPON THE determination of the partnership, the assets and property thereof [including the good-will of the sd business] shall with all convenient speed be realised and sold, and the debts due to the partnership got in, and the proceeds shall be applied in discharge of the liabilities of the partnership, and the expenses of liquidating the same, and realising the assets thereof, and in the next place, in payment to each partner, or his representatives, of any unpaid interest or profits due or owing to him, and of his share of the capital, and the surplus, if any, of the moneys realised as aforesd shall be divided between the partners or their representatives in equal shares [in the shares in which the partners shall be entitled to the net profits of the sd business], and each partner or his representatives shall execute such release to the other partners or their representatives from all claims on account of the partnership, as is usual in such cases: [Provided that in case the moneys realised as aforesd shall not be sufficient to pay in full the respective shares of the partners or their representatives in the sd capital, the same shall be paid rateably as far as such moneys will extend, and no partner or his representatives shall have any claim against the others or other of them, or their or his representatives, in respect of such deficiency].

Another form, where the assets may be of a complex character, providing for the division in specie.

XLVII. UPON THE determination of the partnership an account shall be taken of the assets and liabilities thereof, and a valuation shall be made of all such items in such account as require and admit of valuation [including the good-will of the sd business, which shall be valued in manner hereinbefore provided], and upon the completion of such account and valuation the partners, or their representatives, shall forthwith make due provision for the satisfaction

of the liabilities of the partnership, and of the costs of liquidating the same [and subject thereto the assets [including the good-will] of the partnership shall be divided into shares of equal value, and one of such shares shall be allotted to and become the sole property of each partner or his representatives], [*or*, and subject thereto such part of the assets [including the good-will] of the partnership as shall be equal in value to the capital then belonging to each partner shall be allotted to him or his representatives as his or their sole property, and the residue (if any) of the sd assets [inclusive as aforesd] shall be divided between and allotted to the partners or their representatives in the shares in which the partners shall be entitled to the net profits]: Provided that if it shall be so decided by a majority of the partners, and for this purpose the representatives of a deceased partner shall be substituted for him, any part of the assets may be carried to a suspense account to meet any contingent or unascertained liabilities of the partnership: Provided also that all such instruments or assurances as may be requisite or proper shall be executed by the partners or their representatives for facilitating the getting in of the outstanding assets, and for vesting the sole right of property therein [and in the good-will of the sd business] in any person or persons to whom the same shall be allotted, and for enabling him or them to recover the same, and for securing the discharge of the outstanding liabilities by the person or persons who shall undertake such discharge, and indemnifying the partners or their representatives touching the premises, and for releasing each other from all claims on account of the partnership.

Dissolution, the partners to have option in succession to succeed to the whole business.

XLVIII. IF THE partnership shall expire by effluxion of time, the sd A. shall have the option, to be signified in writing to the other partners or partner not more than —— nor less than —— calendar months before the expiration thereof, to succeed to the whole of the sd business: And if the sd A. shall so signify his election not to succeed thereto, or shall fail within the time aforesd so to signify his election to suc-

ceed thereto, then the sd B. shall have the like option, to be signified in like manner, not less than —— calendar months before the expiration of the partnership: And in the event of his electing within such time not to succeed to the sd business, or failing to signify his election in manner aforesd, then the sd C. shall have the like option, to be signified in like manner before the expiration of the partnership: And in case any partner shall elect to succeed to the sd business, as aforesd, a general account and valuation shall be taken and made at the expiration of the partnership, at the expense of the partnership, of the assets and liabilities thereof [including the estimated value of the good-will, which, unless, &c., *see form* XLV.]: And the partner entitled to succeed to the sd business shall pay to the others or other of them respectively the sum which, on taking such account, shall appear to be the value of their or his shares or share respectively of the [good-will], capital, interest, and profits, after making provision for all the liabilities of the partnership, which respective sums shall as one aggregate amount, bearing interest at the rate of £—— per cent. per annum from the expiration of the partnership, be paid by such partner as soon as conveniently may be, and at latest within six calendar months from the expiration of the partnership, to the outgoing partners or partner: And the whole of the assets of the partnership shall, as from such expiration, become the sole property of the partner entitled to succeed to the sd business, who shall provide for and indemnify the other partners or partner against all the outstanding liabilities of the partnership on that day, and such assurances and instruments shall be executed by the partners at their joint expense as shall be necessary for vesting in the succeeding partner all the assets [and good-will] of the partnership, and for indemnifying the outgoing partners or partner against the liabilities of the partnership, and for releasing each other touching the premises, and from all claims on account of the partnership.

XLIX. IF ANY partner shall die [or retire] before the expiration of the partnership, [such partner, or] his representatives shall be entitled to his share in the capital of the partnership with interest to his death, and to any profits which shall have become payable, but shall not have been actually paid to him; and also if he die [or retire] on the day for taking the annual general account, to his share of profits as ascertained on taking such account; and if he die [or retire] on any other day to an allowance in lieu of profits after the rate of £—— per cent. per annum on his share in the sd capital up to the day of his death [or retirement], to be calculated, if he shall die [or retire] before the —— day of ——, *the first day for taking the annual account*, from the commencement of the partnership, but if he shall die [or retire] after that day, then from the last day for taking the annual general account; and the representatives of such deceased partner, [or such retiring partner], shall be bound by such last annual general account, and shall be excluded from examining the partnership books; and the amount to which the representatives of such deceased partner [or such retiring partner] shall be entitled as aforesd shall, as one aggregate sum carrying interest after the rate of £5 per cent. per annum from the day of his death [or retirement], be paid by the surviving [or continuing] partners or partner to him or his representatives as soon as conveniently may be, and at the latest within six calendar months from the day of his death [or retirement]; and the whole of the assets [including the goodwill] of the partnership as from the day of such death [or retirement] as aforesd, shall belong to, and the whole of the liabilities thereof as from that day shall be borne by the surviving [or continuing] partners or partner solely; and all such instruments, assurances, and transfers, shall be executed and made by the representatives of the deceased partner [or the retiring partner] and the surviving [or continuing] partners or partner, for the purpose of giving effect to this present provision, and for indemnifying the representatives of the deceased partner, [or the retiring

Provision for death, or retirement, of partner, where his capital is to be paid out to him, or his representatives.

partner,] against the liabilities of the partnership, and for releasing each other against all claims on account of the partnership, as are usual in such cases.

Proviso for event of annual account preceding death, &c., of a partner not having been taken.

L. PROVIDED ALWAYS that if upon the death [or retirement] of any partner, it shall appear that the general annual account and valuation up to the —— day of —— then last past has not been taken and signed as hereinbefore provided, the representatives of the deceased partner [or the retiring partner] shall be entitled to join with the surviving or continuing partners or partner in taking such account from the foot of the last general account which shall have been taken and signed as aforesd up to the —— day of —— preceding such death, [or retirement], for the purpose of ascertaining the value of the share of the deceased [or retiring] partner in the capital and property of the partnership upon the —— day of —— then last past, and giving effect to the provision lastly hereinbefore contained.

Provision for death or retirement. Short form when deceased, or retiring partner, is to have profits up to his decease, or retirement.

LI. IN THE event of the death [or retirement] of any partner, an account and statement shall be taken and made out of his share of the capital and effects of the partnership, and of all unpaid interest and profits belonging to him up to the time of his decease [or retirement], for which purpose a valuation shall be made of any assets or effects requiring valuation, and the amount so ascertained to be due and owing to the deceased [or retiring] partner shall be paid by the surviving [or continuing] partners to him or his representatives, within —— calendar months from his decease [or retirement], with interest thereon from his decease [or retirement] until payment at the rate of £5 per cent. per annum, and on such payment the share of the deceased partner in the partnership property and effects shall go and belong to the continuing partners in the proportions in which they shall have contributed to the purchase thereof.

Provision for death or retirement of partner,

LII. *This will be the same as form No.* XLIX., *substituting for,* "his share in the capital of the partnership with interest to his death," *the words,* "interest on his share in the capital

of the partnership to his death," *and inserting immediately before the words*, "and the whole of the assets, &c.," *the following*, "and his share in the capital of the partnership shall remain as a loan to the surviving [or continuing] partners or partner, repayable with interest at the rate of £—— per cent. per annum by the instalments and at the times hereinafter mentioned, that is to say, the principal sum by four equal instalments, to be paid respectively at the expiration of six, twelve, eighteen, and twenty-four calendar months from his death [or retirement]; and the interest on the sd principal sum, or on so much thereof as shall for the time being remain unpaid, shall be added to and paid with each such instalment of principal, and the payment of such instalments and interest shall be secured at the expense and by the joint and several bond or covenant of the surviving [or continuing] partners or partner."

where his capital is to be paid out by instalments.

LIII. *This will be the same as form* XLIX., *substituting for*, "his share in the capital of the partnership with interest to his death," *the words*, "interest on his share in the capital of the partnership to his death," *and inserting immediately before the words*, "and the whole of the assets, &c.," *the following*, "and his share in the capital of the partnership shall remain as a loan (*c*) to the surviving [or continuing] partners or partner during the residue of the sd term of —— years, bearing interest after the rate of £—— per cent. per annum, payable on the usual quarter days, [and additional interest for each year, during which the partnership shall make any profits, equal to one —— part of such profits, (*d*) as appearing by the annual general account; such additional interest to be paid on the signature of the annual general account]; And the repayment of the sd loan at the end of the sd term of —— years, together with interest thereon as aforesd, shall be secured at

Provision for death or retirement of partner, where his capital is to remain as a loan during the partnership term.

(*c*) If the firm becomes bankrupt, or goes into liquidation, before all the debts due at the death of the deceased partner are paid, his representatives cannot prove for the moneys due to them. *Re Dixon, Ex parte Gordon*, L. R. 10, Ch. 160; S. C. *Sub nom. Nanson* v. *Gordon*, 1 App. Cases, 195.

(*d*) See Precedent XI.

the expense and by the joint and several bond or covenant of the surviving [or continuing] partners or partner."

Option to surviving partners to retain share of deceased partner in business, his representatives being sleeping partners.

LIV. In case any partner shall die before the expiration of the partnership, the surviving partners or partner shall have the option of retaining his share in the capital of the partnership in the sd business during the residue of the term of the partnership, such option to be signified to the representatives of the deceased partner within a reasonable time after his will shall have been proved or administration of his estate shall have been granted; and in case the surviving partners or partner shall elect to continue the business, and to retain the capital of the deceased partner therein as aforesd, the same shall be carried on during the residue of the sd term as from the death of the deceased partner, as nearly as may be according to the provisions of these presents, but so that the representatives of the deceased partner shall succeed to his share in the business, and be substituted for him as sleeping partners only, without any power to interfere in or to have any control over the conduct or management of such business, but with power for them, or for some person nominated by them, at all reasonable times to have access to and examine and copy the books, documents, and papers of the firm, and to join in taking the annual general account and valuation: Provided that in case the surviving partners or partner shall continue the business by virtue of such option as aforesd, all proper instruments for carrying the provisions of this clause into effect shall be executed and made between them or him and the representatives of the deceased partner: Provided also that if the net profits of the business which shall be coming to the representatives of such deceased partner shall in any year be less than £5 per cent. on the amount of the capital of such deceased partner retained in the sd business, it shall be lawful for such representatives to retire from the partnership on giving not less than six calendar months' notice to the other partners or partner of their intention so to do or leaving such notice at the counting-house, *or*, "office,"

of the partnership; and at the expiration of such notice the partnership shall determine as to them, and they shall be entitled to receive the share of capital of such deceased partner, with all interest and profits becoming due thereon up to the expiration of such notice, on the same or the like footing as if the deceased partner had then died, and such option of retaining his capital as aforesd had not been exercised.

Power for representatives of deceased partner to continue as sleeping partners.

LV. IF ANY partner shall die before the expiration of the partnership, his representatives shall have the option, to be declared by notice in writing given to the surviving partners or partner, or left at the counting-house, *or*, "office," of the partnership, within —— calendar months after his death, of succeeding to his share in the sd business as from his death as sleeping partners; and if such option shall be exercised, the sd business shall be carried on during the residue of the sd term as from the death of such deceased partner, as nearly as may be according to the provisions of these presents, but so that the representatives of the deceased partner shall succeed to his share in the sd business, and be substituted for him as sleeping partners only, without any right to interfere in or have any control over the conduct or management of such business, but with power for them, or for some person nominated by them, at all reasonable times, to have access to and examine and copy the books, documents, and papers of the partnership, and to join in taking the annual general account and valuation: Provided also that in case the representatives of a deceased partner shall elect to become sleeping partners, by virtue of such option as aforesd, all proper instruments for carrying the provisions of this present clause into effect shall be executed and made between them and the surviving partners or partner. *If thought desirable add proviso at end of last form, mutatis mutandis.*

Power to surviving

LVI. IN CASE of the death [or retirement] of the sd A., the surviving or continuing partners or partner shall be at

or continuing partners to purchase lease of house of business on death or retirement of one partner.

liberty, at any time within —— calendar months after his decease [or retirement], to purchase the lease of the sd house and offices at ——, in case the same shall not have expired, at a valuation to be made under the arbitration clause hereinafter contained [*or*, by payment to him or his representatives of the sum following, that is to say, if he shall die on or before the —— day of ——, the sum of £——, and if he shall die after that day, then such a sum as shall be payable, allowing for every year which shall have elapsed from the sd —— day of ——, the sum of £—— in diminution of the sd sum of £——].

Provision for determining by notice by reference to provisions for death.

LVII. IN THE event of the determination of the partnership as to any partner by notice, under the provision in that behalf hereinbefore contained, the like provisions, mutatis mutandis, shall have effect as are hereinbefore in clauses —— to —— contained, with respect to the event of the death of any partner, and as if the partner as to whom the partnership shall be determined by notice as aforesd had died at the time of such determination.

On death, or retirement of partner, his share of profits to accrue to survivors.

LVIII. THE SHARE of net profits becoming undisposed of by the death [or retirement] of any partner shall accrue to the surviving [or continuing] partners or partner, and if more than one in the shares in which at such death [or retirement] they shall be entitled to participate in the profits, and such surviving [or continuing] partners or partner shall carry on the sd business during the residue of the sd term of —— years pursuant to the provisions of these presents, or as near thereto as circumstances will admit.

Provision for payment of annuity to widow of one partner during her life.

LIX. IF THE SD A. shall die before the expiration of the partnership by effluxion of time, leaving a widow and also the sd B. and C., or one of them, surviving him, his widow shall be entitled during her life to an annuity of £——, to accrue from day to day, but to be payable on the usual quarter days, to be charged on the net profits of the sd business during the then residue of the sd term of —— years, and on the net profits of any business of —— which may be continued by the sd B. and C., or either of them, either alone

or in partnership with any other person or persons after the expiration of the sd term of —— years, [and if such business shall not be continued, then to be payable as to one moiety by the sd B., his exors or admors, and as to the other moiety by the sd C., his exors or admors.]

Provision for securing annuity to family of a deceased partner during the partnership term.

LX. IF THE SD A. shall die during the sd term of —— years leaving a widow, child, or children, his exors or admors shall be entitled to an annuity of £——, to accrue from day to day, but to be payable on the usual quarter days, during such part of the residue of the sd term of —— years as such widow or any such child shall be alive, to be charged on the net profits of the sd business, [and if such business shall not be continued, &c., *as in last form*].

The same. Where the annuity is to continue after the expiration of the partnership.

LXI. IN CASE the sd A. shall die [during the sd term of —— years] leaving a widow, child, or children, the sd B. shall pay to the exors or admors of the sd A. until he the sd B. shall die, or shall retire from carrying on the sd business without receiving any payment, annuity, or pecuniary compensation for his retirement, [and without having nominated a son or nephew to succeed to his share in the partnership under the provisions in that behalf herein contained], and without retaining any share in the profits of the sd business, or the widow and children or child, if any, of the sd A. shall all have died, whichever shall first happen, an annuity of £—— clear of all deductions by equal half-yearly payments, the first of such payments to be made at the expiration of six calendar months from the death of the sd A., unless one of the events in which the sd annuity is to determine shall have previously happened.

The same, adapted to case of several partners.

LXII. IN CASE the sd A. shall die [during the sd term of —— years] leaving a widow, child, or children, the surviving or continuing partners shall pay to the exors or admors of the sd A. until every one of such partners shall have died or retired from carrying on the sd business without, &c., *as in preceding form.*

Power to any partner

LXIII. ANY PARTNER may at any time during his lifetime, or by his will, introduce a son as a partner into the sd firm

to introduce a son into the firm.

during the residue of the sd term for any part or the whole *or*, "but not for the whole," of his share in the partnership, it being intended that the share of profits of such son shall be wholly derived from the share of his father, and may transfer to such son [all or] such part as the partner introducing him may think fit of the capital of such partner in the sd business, and so that the admission of such son shall be upon the following terms:—First, that such new partner shall contribute to the losses of the partnership in proportion to his share of profits; Secondly, that the father of the new partner or the majority of the partners may at any time within —— years from his admission, by notice in writing, expel him from the sd firm and publish a notice of dissolution of the partnership as regards him; Thirdly, such terms, if any, as may be agreed upon between the new partner and his father as to the reverter to his father of the share or part of the share assigned to him upon his death or expulsion in his father's lifetime; Fourthly, that on the expulsion of such new partner, subject to any such arrangement as last aforesd, he shall have the same rights as to the payment of his share of capital, interest, and profits as his representatives would have had if he had died at the time of his expulsion: And Fifthly, that such new partner shall execute a deed of accession whereby he shall covenant to observe the provisions of these presents so far as they shall apply to him and be capable of taking effect.

Provision for securing the admission of two sons of the senior partner into the business, adapted to a partnership for life.

LXIV. IT SHALL be lawful for the sd A. at any time during his life to introduce into the partnership, as an additional partner or partners, any son or sons of his, not exceeding two, and to give to such son or sons the whole or any part of the share of him the sd A. in such profits, and in the event of two sons of the sd A. being so introduced, the share of profits given by him to them shall be divided between them in such proportions as the sd A. shall think fit. In case the sd A. shall die before he shall have introduced any son or more than one son into the partnership, and any son of the sd A., or in case no son shall previously have been

introduced into the partnership, then in case any two sons of the sd A. shall attain the age of —— years and shall desire to be apprenticed, [*or*, articled] to the sd business, the surviving or continuing partners or partner for the time being shall receive such son or sons of the sd A. as an apprentice or apprentices, [*or, if a solicitor's business*, articled clerk or clerks,] without any premium or payment [except for the stamp or stamps on the articles], and any such son or sons who shall be so apprenticed, [*or*, articled,] whether in the lifetime of the sd A. or after his decease, shall, if he or they shall so desire, within —— years after the commencement of such apprenticeship, [*or*, articles, provided he or they respectively shall have been duly admitted to practise as a solicitor,] be admitted into the partnership without premium and upon the terms of such son or sons receiving the share of the profits of the sd business to which the sd A. would, if he had been living and remained a partner, have been entitled, inclusive of any additional share which shall have accrued to the sd A. by the death or retirement of any of the sd partners, or would have so accrued, or would thereafter accrue to him in such event if he had been living and remained a partner, to the intent that such son or such two sons together shall succeed to the rights of the sd A. as regards sharing in the profits of the sd business, and so that if two sons are so admitted, the sd share of profits shall be divided between them in such manner as they may agree, and in case either of them shall die or retire, his share in the sd profits shall thereupon accrue to the other of them: PROVIDED ALWAYS that in case any son or sons of the sd A. shall be admitted into the partnership, whether during his lifetime or after his decease, under the provisions hereinbefore contained, the partnership shall, as regards the duration thereof, continue during so long as the partners for the time being or any two of them shall live, [but subject to determination as regards any partner by notice as hereinbefore provided:] PROVIDED ALSO that any son or sons of the sd A. who shall

be so admitted shall, with respect to the management of the sd business, and the amount of control which he or they shall be entitled to exercise in relation thereto, be in the same position and have the same rights as the sd B. as far as the case will admit, and shall be bound to give his or their whole time and attention faithfully and diligently to the sd business, and shall not be engaged in any other business, and in other respects such partnership shall be upon the terms of this present partnership as nearly as may be, the son or sons of the sd A. being, save as herein otherwise provided, placed on an equal footing with the sd B.: PROVIDED ALSO that in case the sd son or sons of the sd A. shall be admitted into the partnership, whether in his lifetime or after his decease as aforesd, he or they respectively shall on being so admitted enter into a proper engagement by deed to abide by and perform the stipulations and agreements of these presents so far as the same shall be applicable to him or them respectively, and such deed or deeds shall contain such other provisions as may be necessary or proper to give effect to the intentions hereinbefore expressed, and in case any dispute or question shall arise as to the form or contents thereof the same shall be referred to arbitration under the clause hereinafter for that purpose contained: PROVIDED FURTHER that notwithstanding the provisions hereinbefore contained, it shall be lawful for the sd B. at any time after the decease of the sd A., and before both his sons shall have been admitted into the partnership as aforesd, to retire from carrying on the sd business, provided that he either receive no payment, annuity, or pecuniary compensation for such retirement, or that his successor or successors in the business covenant with him to perform and observe the stipulations and agreements hereinbefore contained respecting the admission of the sd son or sons of the sd A. into the sd business, and in that event the sd B. shall not be liable for any default in the observance or performance of the covenant so entered into by such successor or successors.

LXV. PROVIDED ALWAYS that if any of the sd partners shall at any time during the partnership become [lunatic or] bankrupt, or enter into any composition or arrangement with or for the benefit of his creditors, or commit any breach of any of the stipulations or agreements herein contained, the other partners or partner may, by notice in writing, given to the partner so becoming [lunatic, or] bankrupt, or entering into such composition or arrangement, or committing such breach, or left at the counting-house, *or*, "office," determine the partnership so far as regards such last-mentioned partner, and publish a notice of dissolution of the partnership as regards him, whereupon the same shall immediately cease and determine accordingly, without prejudice to the remedies of the other partners or partner for any antecedent breach of any of the stipulations or agreements aforesd, and thereupon the like provisions, mutatis mutandis, shall have effect respecting the payment out of the share of the partner as to whom the partnership shall be determined as aforesd or otherwise, as if he had then died.

Power of expulsion in case of lunacy, bankruptcy, or breach of covenant.

LXVI. ANY NOTICE hereby authorised or required to be given to the sd partners or any of them, shall be sufficiently given by leaving the same at the counting-house or office [principal place of business] of the sd firm.

How notices to be given.

LXVII. IF AT any time during the continuance of the partnership or after the dissolution or determination thereof, any dispute, difference, or question shall arise between the sd partners or any of them, or their or any of their representatives, touching the partnership or the accounts or transactions thereof, or the dissolution or winding up thereof, or the construction, meaning, or effect of these presents, or anything herein contained, or the rights or liabilities of the sd partners or their representatives under these presents or otherwise in relation to the premises, then every such dispute, difference, or question shall be referred to the arbitration of two indifferent persons, one to be appointed by each party to the sd dispute, difference, or question, or

Arbitration clause.

an umpire to be appointed by the arbitrators in writing before commencing the business of the reference, and the decision or award of the sd arbitrators or their umpire shall be binding upon the sd partners and each of them, their and each of their representatives, and no action or legal proceeding shall be commenced or prosecuted by any of the partners, their or any of their representatives, against the other [or others] of them, or his [or their] representatives, touching such dispute, difference, or question as aforesd. And these presents shall be deemed to be a submission to arbitration within the Common Law Procedure Act, 1854, or any statutory modification or re-enactment thereof for the time being in force: And the costs of the reference and award shall be in the discretion of the arbitrators or umpire, who may direct to, and by whom and in what manner the same or any part thereof shall be paid, and with power to tax or settle the amount of costs to be so paid or any part thereof, and to award costs to be paid as between solicitor and client, and that the submission of the sd parties to the award of the sd arbitrators or umpire may at the instance of either party and without any notice to the other of them, be made a rule or order of the —— division [any division] of the High Court of Justice.(*a*)

The same. Short form.

LXVIII. If at any time any dispute or question shall arise under these presents the same shall be referred to two arbitrators or their umpire, pursuant to the Common Law Procedure Act, 1854, or any statutory modification or re-enactment thereof for the time being in force, and so that this submission and the award may at the instance of either party and without notice to the other of them be made a rule or order of any division of the High Court of Justice.

(*a*) For other forms of Arbitration Clauses, see p. 123, *et seq.*

PRECEDENTS.

I.

DEED *of* PARTNERSHIP *between* TWO TRADERS *for a* TERM *of years.* VARIATIONS *where the* PARTNERSHIP *is for* LIFE, *or* DETERMINABLE *on* NOTICE, *also where* RECITALS *are inserted, and where a* PREMIUM *is paid.* PREC. I.

THIS INDRE made the —— day of —— BETWEEN A., of, &c., of the one part; and B., of, &c., of the other part: [WHAS the sd A. has for some years past carried on the trade or business of ——, at ——: AND WHAS the sd B. has for some time past been engaged as a clerk in the sd business: AND WHAS the sd A. has agreed to take the sd B. into partnership with him in the sd business for the period and upon the terms hereinafter mentioned, in consideration of the premium or sum of £——, which has been paid by the sd B. to the sd A. upon the execution of these presents, the receipt whereof the sd A. doth hereby acknowledge: NOW THIS INDRE] WITNESSETH that in consideration of the mutual confidence of the sd parties, [and of the premises] each of them, the sd A. and B., so far as the agreements and provisions hereinafter contained are or ought to be performed or observed by him, his exors or admors, doth hereby for himself, his heirs, exors, and admors, covenant with the other of them, his exors and admors, in manner following, that is to say, *insert such of the following clauses as may be applicable, the clauses being paragraphed and numbered; Duration and style of partnership*, p. 920; [*Power to determine partnership by notice*, p. 920; (*b*)] *Place of business*, p. 921; *Provisions as to capital, see clauses* VII. *to* XIV., p. 921;

Parties. Recitals. Trade carried on. Employment of new partner. Agreement. Witnesseth. Covenant. Clauses.

(*b*) The clause in this bracket may be omitted, if it is desired to shorten the draft.

PREC. I.

[*Employment of capital*, p. 923 (*b*);] *Bankers*, p. 923; *Outgoings*, p. 924; *Profits*, p. 924; *Drawings*, p. 925; *Attention to business*, p. 926; *Not to engage in any other business*, p. 926; *Not to pledge credit of firm*, p. 927; *Not to give credit when forbidden*, p. 927; *No contract to exceed a certain amount*, p. 927; *Hiring clerks, &c.*, p. 927; *Not to become surety, &c.*, p. 927; [*To be just*, p. 928; *To give information*, p. 928; *Journeys*, p. 928; *Not to employ assets of firm improperly*, p. 928; *Not to assign share*, p. 928; *Not to cause the property of the firm to be taken in execution*, p. 928; *Not to compound debts*, p. 929; *Each partner to pay his private debts*, p. 929 (*b*);] *Accounts to be kept*, p. 929; *Annual general account*, p. 929; *Provisions for winding up on expiration of partnership by effluxion of time or death as the case may require, see* pp. 930 *to* 938, *clauses* XLVI. *to* LVI., *if the partnership is for a term, the usual provisions will be Nos.* XLVI. *and* XLIX.; *if for life, the usual provision will be No.* XLIX.; *if there is a power to retire on notice, the variations providing for that event will be inserted, or if convenient, that event may be provided for by a separate clause, see* p. 938, *No.* LVII.; [*Expulsion clause*, p. 943;] *Arbitration*, p. 943; *Add any of the other clauses above which may be appropriate.*

IN WITNESS, &c.

II.

PREC. II.

DEED *of* PARTNERSHIP *between* THREE *or more persons for a* TERM *of years.* VARIATIONS *where the* PARTNERSHIP *is for* LIFE, *or* DETERMINABLE *on* NOTICE. *Without* RECITALS.

Witnesseth.

Parties, A., 1; B., 2; C., 3; D., 4; WITNESSETH that in consideration of the mutual confidence of the sd

(*b*) The clauses in these brackets may be omitted, if it is desired to shorten the draft.

parties, each of them the sd A., B., C., and D., so far as the agreements and provisions hereinafter contained are or ought to be performed or observed by him, his exors or admors, doth hereby for himself, his heirs, exors, and admors, covenant with the others of them, their exors and admors, jointly and severally as follows, that is to say; *insert the following clauses, or such of them as may be appropriate, in numbered paragraphs; Duration and style of partnership*, p. 920, *form* II.; [*Power to determine partnership by notice*, p. 920;] *Death, &c., of one partner not to dissolve partnership as to others*, p. 921; *Place of business*, p. 921; *Provisions as to capital*, pp. 921 *to* 923; [*Employment of capital*, p. 923; (*c*)] *Bankers*, p. 923; *Outgoings*, p. 924; *Profits*, p. 924; *Drawings*, p. 925; *Attention to business*, p. 926; *Not to engage in any other business*, p. 926; *Not to pledge credit*, p. 927 (*d*); *Not to give credit when forbidden*, p. 927; *No contract to exceed a certain amount*, p. 927; *Hiring clerks*, p. 927; *Not to become surety*, p. 927; [*To be just*, p. 928; *To give information*, p. 928; *Journeys*, p. 928; *Not to employ assets of firm improperly*, p. 928; *Not to assign share*, p. 928; *Not to cause property of firm to be taken in execution*, p. 928; *Not to compound debts*, p. 929; *Each partner to pay his own private debts*, p. 929; (*c*)]

PREC. II.

Covenant.

Clauses.

(*c*) The clauses in these brackets may be omitted if it is desired to shorten the draft.

(*d*) The following is a more stringent clause:—

"No bill, promissory note, bond, or other security, shall be signed, drawn, endorsed, or negotiated by any partner in the name or on behalf of the firm, other than the *bonâ fide* bills, notes, or securities of the firm, and which shall have been regularly recorded in the books thereof, and any infraction of this clause shall immediately dissolve the partnership as regards the partner so offending; and on proof of such offence, the other partners shall be at liberty forthwith to sign a dissolution of the partnership in the name of and as against the offending partner, and to gazette the same, referring to this clause as their authority

Power to expel partner pledging credit improperly.

PREC. II.

Accounts to be kept, p. 929; *Annual general account*, p. 929; *Provisions for winding up, &c., on expiration of partnership or death, &c., as the case may require, see* pp. 930 *to* 938, *clauses* XLVI. *to* LVIII.; *if the partnership is for a term, the usual provisions will be Nos.* XLVI., XLIX., *and* LVIII.; *if for life, the usual provisions will be Nos.* XLIX. *and* LVIII.; *if there is a power to retire on notice, the variations providing for that event will be inserted, or if convenient, that event may be provided for by a separate clause, see* p. 938, *No.* LVII. (*e*); [*Expulsion clause*, p. 943]; *Arbitration clause*, p. 943; *Add any of the other clauses above that may be appropriate.*

IN WITNESS, &c.

for so doing; and it shall be lawful for the partners to pay out the capital of the offending partner as it stood at the last preceding general account, without any additions thereto for subsequently accruing profits, and he shall thereupon cease to have any interest in the partnership."

(*e*) The following is a clause providing for dissolution in case of heavy losses :—

Power to dissolve in case of losses.

"Provided that if at any time owing to losses [or accidents at the mines, or faults in the strata], or from any other cause whatever, one-fourth of the entire capital shall be sunk, or reasonable apprehensions shall be entertained that a call would require to be made for further capital to the extent of £—— in order to carry on the works and business of the partnership, a majority in value of the partners may require the partnership to be dissolved and wound up, as if the same had expired by effluxion of time."

III.

DEED *of* PARTNERSHIP *between* THREE PERSONS *as* SOLICITORS *for a* TERM. VARIATIONS *where the* PARTNERSHIP *is for* LIFE *or determinable on* NOTICE. PREC. III.

Parties, A., *one old partner*, 1; B., *another old partner*, 2; C., *incoming partner*, 3. WHAS the sd A. and B. are engaged in partnership together in the profession, practice, and business of solicitors and conveyancing at ——, and it has been agreed between them and the sd C. that the sd C. should purchase one equal —— share of their business, including profits of offices and appointments held by the sd A. and B. [other than the office of —— now held by the sd A.], and that the sd A., B., and C. should carry on the sd business in partnership together for the period and upon the terms hereinafter mentioned: NOW THIS INDRE WITNESSETH that, in pursuance of the sd agreement, and in consideration of the mutual confidence of the sd parties, and of the sum of £—— upon the execution hereof paid by the sd C. to the sd A. and B., the receipt whereof is hereby acknowledged, each of them the sd A., B., and C., so far as the agreements and provisions hereinafter contained, &c., *the remainder of the deed will be similar to Prec.* II., p. 946, *with the following alterations and additional clauses.* Recitals. Business. Witnesseth. Covenant. Clauses.

In the clause as to outgoings, p. 924, *after the words*, "in respect of the same," *add the words*, "including the expenses of performing the duties of any such office or appointment as hereinbefore mentioned [except the sd office of ——]." Outgoings.

PROVIDED ALWAYS that any money received from clients indebted to the sd late firm of —— for business transacted previously to the commencement of the partnership hereby constituted or otherwise, shall be appropriated and applied in the first instance in payment of the money so due or owing to the sd late firm. Appropriation of moneys received from clients of late firm.

PREC. III.

After attention to business, p. 926, *add, if so intended, a proviso,* "that the sd A. shall not be required to act as an advocate."

One partner not to be required to act as advocate.

Charges for business done for any partner or his family.

IN THE EVENT of the firm or any partner acting as solicitor for or on behalf of any of the partners or his wife or children, or his or their trustees, such business shall not be charged for except as to payments out of pocket, and except costs recovered against other parties in any successful action or defence or other proceedings, or out of any fund or estate to which such action or proceeding shall relate, which costs shall be carried to the credit of the partnership.

Not to undertake business objected to by other partners.

After the clause, Not to engage in any other business, p. 926, *add,* "NO PARTNER shall undertake the prosecution or defence of any action or proceeding or transact any professional business on behalf of any person or company other than himself or his own wife or children, or his, her, or their trustees, after having been required in writing not to do so by the other partners or partner."

Clerks, &c.

NO PARTNER shall hire or dismiss any clerk or servant or take any articled clerk [or change the London agents of the firm] without the consent of the other partners or partner.

Omit the clause, No contract to exceed a certain amount, p. 927.

Accounts to be kept.

After accounts to be kept, p. 929, *add,* "And each partner shall enter in proper books kept for that purpose all attendances and professional business transacted by him, together with all such circumstances of names, times, and places as may be necessary or useful for the manifestation of the business of the partnership. The sd books, with all deeds, securities, letters, and documents relating to the partnership, shall be kept at the offices of the partnership, and each partner shall at all times have power to peruse or copy the same."

Provision as to the papers on death or

After dissolution clauses, add, "ON THE DEATH [or retirement] of any partner, all deeds, drafts, and other papers relating to the business of the sd firm shall (subject to the

claims of any clients to whom the same may belong) remain in the hands of or be delivered to the surviving or continuing partners or partner. PREC. III. retirement of partner,

Upon the final determination of the partnership by effluxion of time, all deeds, drafts, and papers relating to the business of the firm shall, unless the client or clients to whom the same belong object, be delivered to the partner who shall usually have attended to the business of such client or clients. and on dissolution.

In witness, &c.

IV.

EXTENSION *of* Term *of* Partnership *by* Deed *endorsed on the* Articles. PREC. IV.

Parties, A., 1; B., 2; C., 3. Whas the term of —— years, which was by the within-written indre fixed for the duration of the partnership thereby agreed to be entered into, will expire on the —— day of —— next: And whas the sd parties hereto have agreed to continue the sd partnership for the further term of —— years from the sd —— day of —— in manner [and subject as] hereinafter expressed: NOW THIS INDRE WITNESSETH that each of them the sd A., B., and C. doth hereby for himself, his heirs, exors, and admors, covenant with the others of them and their exors and admors jointly and severally in manner following, that is to say, That they the sd A., B., and C., and the survivors of them, will remain and continue partners together in the within-mentioned trade or business for the further term of —— years, to be computed from the sd —— day of —— next, if they or any two of them shall so long live, upon such and the same terms and conditions and subject to such and the same provisions and agreements [except and subject as hereinafter mentioned] as are

Recitals. Expiration of term. Agreement. Witnesseth. Covenant. To continue partnership.

PREC. IV.

in and by the within-written indre expressed and contained in relation to the partnership thereby constituted, and so that all such terms, conditions, provisions, and agreements shall [subject as hereinafter mentioned] remain in force and take effect in like manner as if the sd partnership had been originally by the within-written indre entered into for the full term of —— years, instead of the sd term of —— years: [PROVIDED ALWAYS, and it is hereby agreed, &c., *here insert any modifications in the terms of the partnership*].

IN WITNESS, &c.

V.

PREC. V.

DEED *of* ACCESSION *on the* ADMISSION *of a* SON *of a* PARTNER *into the Firm pursuant to a* PROVISION *contained in the* ARTICLES *of* PARTNERSHIP.

Parties, A., *father*, 1; B. and C., *two other old partners*, 2; D., "son of the sd A.," 3. Recitals. WHAS by certain articles of partnership, hereinafter called the articles, dated, &c., the sd A., B., and C. entered into mutual covenants, amongst other things, that they would become and remain partners in the trade of ——, under the firm of ——, for the term of —— years, from the —— day of ——, *Continue the recital, setting out the clauses as to capital, division of profits, the power to any partner to introduce a son, and the restrictive conditions, if any, imposed on such introduction, and the direction as to a deed of accession:* AND WHAS the sd A., B., and C. have carried on the sd business up to the present time according to the provisions of the sd articles, and they are now entitled to the capital of the sd partnership, consisting of, &c., in the shares following, that is to say, the sd A. to ——, &c.: AND WHAS in pursuance of the provisions contained in the sd articles as aforesd, the sd A. is desirous of introducing the sd D. as a partner into the sd firm for the residue of the sd term, and to assign to him one

Articles of partnership.

Title to capital.

Desire to introduce son.

equal fourth part of the share of him the sd A. but subject to the restrictions and provisions hereinafter contained: NOW THIS INDRE WITNESSETH that for effectuating the sd desire, and in pursuance of the sd provision contained in the sd articles, the sd A., with the consent hereby testified of the sd B. and C., doth hereby introduce the sd D. as a partner into the sd firm, upon the terms and subject to the restrictions and provisions hereinafter contained: AND THE sd A. doth hereby assign unto the sd D., his exors, admors, and assigns, ONE equal fourth part of the share of him the sd A. in the capital, stock in trade, assets, goodwill, and profits of the sd firm as from the —— day of ——, TO HOLD the same UNTO the sd D., his exors, admors, and assigns, absolutely subject as hereinafter mentioned: AND THIS INDRE ALSO WITNESSETH that pursuant to the provisions contained in the sd articles, *mutual covenants by A., B., C., and D., as in Prec.* II.

Witnesseth.

Introduction.

Assignment of share.

Habendum to son.

Further witnesseth.

Covenants.

1. THAT THEY the sd A., B., C., and D. will, as from the —— day of ——, be and remain partners in the sd trade or business of —— for the residue of the sd term of —— years, upon the terms and subject to the agreements and provisions contained in the sd articles, with such variations as are rendered necessary by the introduction of the sd D. as a partner, and the assignment to him of the sd one-fourth part of the share of the sd A. as aforesd, and the provisions hereinafter contained, and will perform and observe the sd agreements and provisions, with such variations as aforesd, in the same manner, as far as circumstances will admit, as if the sd D. had originally been a party to the sd articles, and the provisions of these presents had been embodied therein.

To be partners.

2. *Here insert the special provisions and restrictions affecting the new partner.*

IN WITNESS, &c.

VI.

PREC. VI.

DEED *of* DISSOLUTION *of* PARTNERSHIP *between* TWO PARTNERS *on the* RETIREMENT *of one, where the* BUSINESS *is to be* CONTINUED *by the other.*

Recitals. Parties, A., 1 ; B., 2. WHAS the sd A. and B. have for some years past carried on the business of —— at ——,

Articles of partnership. under the provisions of articles of partnership, dated, &c., whereby it was provided, &c., *state any of the provisions which are material*(*f*); AND WHAS the sd partners are possessed, as part of their partnership property,

Particulars of partnership assets. of a lease of certain —— and hereditaments at ——, which lease is dated, &c., and made, &c., [*or*, of the several leasehold properties specified in the schedule hereto], and of certain fixed and movable engines, machinery, plant, stock-in-trade, and other effects, *or as the case may be ;* AND WHAS it has been

Agreement for dissolution. agreed between the sd A. and B. that the sd partnership shall stand dissolved as from the —— day of ——, and a notice of such dissolution has been signed by the sd parties, to be published in the *London Gazette*, and it has been agreed, that as from that day the sd business shall belong to and be carried on by the sd B. solely, and that the share and interest of the sd A. in the assets and goodwill of the sd partnership shall be assigned and made over to the sd B. on his taking upon himself the whole of the debts and liabilities of the sd partnership which were outstanding on the sd —— day of ——, and paying to the sd A. the value of his share and interest in the sd partnership and the assets and goodwill thereof as the same

Account taken. stood on that day: AND WHAS an account and valuation has been taken and made by the sd partners of the sd

(*f*) If no articles, say, "and are interested therein in equal shares, but such partnership is not regulated by any articles or agreement in writing."

business, and the assets and goodwill thereof, and the value of the share and interest of the sd A. therein, after providing for the payment and satisfaction of the debts and liabilities thereof on the sd —— day of ——, has been ascertained to be the sum of £——(*g*): NOW THIS INDRE WITNESSETH that in pursuance of the sd agreement in this behalf, they the sd A. and B. do hereby declare that the sd partnership between them shall be considered as determined and stand dissolved as from the sd —— day of ——, [and that the hereinbefore mentioned indre of partnership, and all clauses, provisions, and things therein contained shall as from the sd —— day of —— cease and be void]: AND THIS INDRE ALSO WITNESSETH that in pursuance of the sd agreement, and in consideration of the premises and of the sum of £——(*a*) upon the execution of these

Witnesseth

Dissolution.

Further witnesseth.

(*g*) If the sum due to the outgoing partner is to be paid by instalments, and security given, add, "AND WHAS it has been further agreed that the payment of the sd sum of £—— shall be made by the sd B. to the sd A., by instalments, with interest at £5 per cent. per annum, and shall be secured by the covenant of the sd B. and by a mortgage of freehold and leasehold property of the sd B. situate at, &c. [including the hereditaments comprised in the respective leases hereinbefore mentioned], and such security is intended to be forthwith executed." And in the second Witnessing part, say, "in consideration of the premises, and of the sum of £——, agreed to be paid by the sd B. to the sd A. as aforesd, and the payment whereof is intended to be secured in manner aforesd."

(*a*) The deed will be chargeable with *ad valorem* duty on this sum as a conveyance on sale (*Christie* v. *Commissioners, &c.*, L. R. 2 Ex. 46; *Phillips* v. *the same*, *ib.* 399). If the duty would be of serious amount, a saving might be effected by dispensing with a formal assignment, except as to any interest in real or leasehold estate, and allowing the matter to rest in contract as to the remainder of the property, care however in that case being taken that the recitals of the deed of dissolution, or the separate receipt taken for the consideration-money, do not operate in law as a transfer of the property so as to let in the liability to duty. See above, p. 417, note (*a*). And see the next Precedent for a form of such a deed.

PREC. VI.

Assignment of share in partnership.

presents paid by the sd B. to the sd A., the receipt whereof the sd A. doth hereby acknowledge, He the sd A. doth hereby assign and transfer unto the sd B., his exors, admors, and assigns, ALL the part or share and interest whatsoever of him the sd A., of and in all and singular the leasehold (*b*) hereditaments and premises hereinbefore mentioned or referred to [*or*, the several leasehold hereditaments, and premises specified in the schedule hereto], AND of and in all and singular the engines, machinery (whether fixed or movable), plant, stock-in-trade, book and other debts, credits, contracts, assets, effects, profits, business, and goodwill of the sd partnership, TOGETHER WITH all the rights, members, and appurtenances to the sd premises belonging, AND ALL the estate, interest, claim, and demand of the sd A. in, to, and upon the same, TO HAVE AND TO HOLD all the sd premises hereinbefore expressed to be hereby assigned UNTO the sd B., his exors, admors, and assigns, for his and their absolute benefit; AND FOR the more effectually enabling the sd B., his exors, admors, and assigns, to receive and recover and obtain the benefit of the premises hereby assigned, the sd A. doth hereby irrevocably appoint the sd B., his exors, admors, and assigns, the attorney or attorneys of him the sd A., his exors or admors, in the joint names of the sd A. and B., or in the name or names of the sd A., his exors or admors, or otherwise as the case may require, but for the exclusive benefit and at the sole costs and risk of the sd B., his exors, admors, or assigns, to demand, call in, and receive from all persons liable to pay, deliver, or account for the same, or any part thereof, all and singular the book and other debts, credits, moneys, and effects of the sd partnership, and to give effectual receipts and discharges for the same respectively, and to endorse bills and other negotiable instruments, and to use and adopt all such remedies, proceedings,

General words.

Estate clause.

Habendum

To continuing partner.

Power of attorney.

(*b*) It may sometimes be desirable to convey or assign the share of a deceased or retiring partner in any real or leasehold property by a separate deed. See Precedent IX.

or means for getting in and recovering the sd debts, credits, moneys, and effects respectively, and enforcing and obtaining the benefit of any of the contracts of the sd partnership as may be deemed expedient, and for all or any of the purposes aforesd from time to time to appoint a substitute or substitutes, and such substitution at pleasure to revoke, and generally to do whatsoever may be requisite for giving to the sd B., his exors, admors, or assigns, the full benefit of the assignment hereby made; *Covenant by A. with B., his exors, admors, and assigns,* that he the sd A. has not at any time heretofore, except as appears by the books of the sd partnership, contracted any debt or obligation which can or may charge or affect the sd B., his exors, admors, or assigns, or the assets or effects of the sd partnership, or any part thereof, or received or discharged any of the sd debts, credits, moneys, or effects, except as aforesd, or done any act whereby the premises hereby assigned are or may be charged or incumbered in any manner howsoever; AND THAT he the sd A., his exors or admors, will at all times ratify and confirm whatsoever the sd B., his exors, admors, or assigns, or any substitute or substitutes acting under him or them, shall do or purport to do by virtue of these presents; AND WILL, at all times, on the request and at the costs of the sd B., his exors, admors, or assigns, execute and do all such assurances and acts whatsoever for the further or more effectually vesting the premises hereby assigned, and every part thereof, in the sd B., his exors, admors, or assigns, and enabling him and them to receive, recover, and obtain the full benefit of the same as by him or them shall be reasonably required; AND moreover that he the sd A., his exors or admors, will not revoke the power hereinbefore given to the sd B., his exors, admors, and assigns, nor compound, release or become non-suit in any action or proceeding which may be instituted or taken by him or them by virtue thereof, nor do any other act by means whereof the recovery of the premises hereby assigned, or any part thereof, may be impeached or delayed, nor interfere in or about the

Covenant by retiring partner against incumbrances.

To ratify.

For further assurance.

Not to revoke power of attorney.

PREC. VI.

Covenants by continuing partner.

To pay debts.

For indemnity.

premises further or otherwise than the sd B., his exors, admors, or assigns, shall direct or require; *Covenant by B. with A., his exors and admors,* that he the sd B. will in due course pay all the debts and discharge all the liabilities of the sd partnership, including therein the rents and covenants to be paid and performed in respect of the sd leasehold premises; AND WILL, at all times hereafter, effectually keep indemnified the sd A., his exors and admors, and his and their estate and effects, against all such debts and liabilities, and all actions, proceedings, costs, and expenses in respect thereof, and all costs and expenses by reason of any action or proceeding which may be instituted or taken by the sd B., his exors, admors, or assigns, by virtue of the power or authority hereinbefore contained, or of anything relating thereto: AND EACH of them the sd A. and B. doth hereby for himself, his heirs, exors, and admors, release and for ever discharge the other of them, his heirs, exors, admors, and assigns from all actions, proceedings, claims, and demands whatsoever which such respective releasing party, or his heirs, exors, admors, or assigns, now has or hereafter might have had against the other of them, his heirs, exors, admors, or assigns, on account of the sd partnership, or anything relating thereto, but so nevertheless that this present release shall not prejudice or affect any of the covenants, agreements, or provisions herein contained, or the rights or remedies of the sd respective parties, their heirs, exors, admors, or assigns, hereunder.

Mutual release.

IN WITNESS, &c.

Schedule of leaseholds.

VII.

PREC. VII.

DEED *of* DISSOLUTION *of* PARTNERSHIP *between* TWO PARTNERS *on the* RETIREMENT *of one, where to save ad valorem* STAMP *duty an* ASSIGNMENT *of the*

PREC. VII.

GOODWILL *and* ASSETS *other than* LEASEHOLDS *is* DISPENSED *with.* (*c*)

Parties, A., 1; B., 2. *Recitals, as in Precedent* VI: AND WHAS the sum of £——, part of the sd sum of £——, is the estimated value of the share and interest of the sd A. in the sd leasehold hereditaments; and it has been agreed that such share and interest shall be assigned to the sd B. in consideration of the payment by him of the sd sum of £——, *i. e. the part apportioned for value of leaseholds,* to the sd A. (*d*), and that the sd A. shall enter into such covenants and agreements as are hereinafter contained for the transfer and assignment of his share and interest in the residue of the assets, and the good-will of the sd business to the sd B., upon the payment by him of the residue of the sd sum of £—— (*d*); and it has been further agreed that such other covenants and provisions should be contained in these presents as are hereinafter expressed. *First testatum, dissolution of partnership, as in Precedent* VI.; *Second testatum, assignment of share of leaseholds, with fixed machinery and fixtures, in consideration of the sum apportioned for the value thereof, subject to the rent and covenants, as in Precedent* VI. or IX.; *A power of attorney may be inserted to enable B. to get in the book debts, as in Precedent* VI., *omitting the introductory and concluding words referring to the assignment, and the words,* "for the exclusive benefit, &c., of the sd B.," &c.; *add a covenant by A., that he has good right to assign the share of the leaseholds, free from incumbrances, that he has not created any debt or incumbrance affecting the partnership, further than appears by the books, and for further assurance of the leaseholds, see Precedents* VI. *and* IX.: "AND THAT he, the sd

Recitals.

Apportionment of consideration and agreement.

Covenant for assignment upon payment.

(*c*) See p. 955, note (*a*).

(*d*) If the sum due is to be paid by instalments and security given, add, "being secured in manner aforesd;" and in the covenant for assignment upon payment, in the next page, say, "will upon the execution of the sd security for the sd sum of £——, &c."

PREC. VII. A., his exors or admors, will, upon payment to him or them by the sd B., his exors or admors, of the sum of £——, being the residue of the sd sum of £——, or at any time or times thereafter, upon the request and at the costs of the sd B., his exors or admors, execute, make, and do all such assignments, transfers, assurances, releases, powers of attorney, instruments, and acts whatsoever, for assigning, releasing or transferring to, or vesting in him or them all the part or share and interest of him the sd A. of and in all and singular the plant, stock-in-trade, book and other debts, credits, contracts, assets, and effects of the sd partnership (other than the sd leasehold premises), and the profits, business, and goodwill thereof, and enabling the sd B., his exors or admors, to receive, recover, and obtain possession and the full benefit of the same respective premises, as by him or them shall be reasonably required;" *Covenant by B. to pay debts, and liabilities of firm, including rents and covenants of leaseholds, and indemnify A., and mutual release, as in Precedent* VI. (*e*)

IN WITNESS, &c.

VIII.

PREC. VIII. DEED *of* DISSOLUTION *on* DEATH *of* ONE *of* THREE *partners, where part of the* ASSETS *consists of* REAL *and* LEASEHOLD PROPERTY, *which are transferred by a* SEPARATE DEED (*f*), *and where the* SHARE *of the* CAPITAL *of the* DECEASED PARTNER *is to remain as a* LOAN *to the firm, payable by* INSTALMENTS, *under a provision in the Articles.*

Parties, A. and B., *exors of deceased partner*, 1; C. and

(*e*) Contemporaneously there will be a separate simple receipt (containing nothing more), signed by A. for the balance due to him.

(*f*) See above, p. 956, note (*b*), and Precedents IX. and XI.

D., *continuing partners*, 2. *Recite articles of partnership between C. and D., and X., setting out the provisions for death of a partner; Death of X., and will appointing* A. *and B. exors, and probate*, p. 244: AND WHAS the sd partners were at the decease of the sd X. entitled as part of their partnership property to the hereditaments specified in the first schedule hereto, which are of freehold tenure, and to the hereditaments specified in the second schedule hereto, which are held under the respective leases in such schedule mentioned, and they were also entitled, &c., *State short particulars of other property;* AND WHAS the accounts and valuations directed by the sd articles of partnership to be taken and made on the death of any partner have been taken and made, and it thereby appears that the sum of £—— is the amount now due to the sd A. and B., as exors of the sd X., in respect of interest and profits, and that the sum of £—— is the amount of the share of the sd X. in the capital of the sd partnership, after discharging the liabilities thereof which were outstanding at the death of the sd X.; AND WHAS it has been agreed [pursuant to the provisions contained in the sd articles] that the sd sum of £—— shall be paid by the sd C. and D. to the sd A. and B. upon the execution of these presents, and that the payment of the said sum of £——, *i.e. the share of capital of X.*, by four equal instalments, at the expiration of six, twelve, eighteen, and twenty-four calendar months from the death of the sd X., together with interest on the same sum, or the part thereof for the time being unpaid, after the rate of £—— per cent. per annum from his decease, shall be secured to the sd A. and B. by the joint and several bond of the sd C. and D., and that the sd A. and B. shall assign to the sd C. and D. the share of the sd X. in the assets and good-will of the sd partnership: AND WHAS, for the purposes of the Stamp Act, (*g*) it has been agreed that the sum of £——, part of the sd sum of

PREC. VIII.
Recitals.
Particulars of partnership property.
Accounts taken.
Agreement for payment.
Apportionment for duty.

(*g*) See above, p. 955, note (*a*).

PREC. VIII.

£——, shall be the value of the share of the sd X. in the sd freehold and leasehold hereditaments, and that the sum of £——, residue of the sd sum of £——, shall be the value of the share of the sd X. in the residue

Bond.

of the assets and goodwill of the sd partnership: AND WHAS by a bond or obligation bearing even date with, but executed before these presents, under the hands and seals of the sd C. and D., the sd C. and D. have become jointly and severally bound to the sd A. and B. in the penal sum of £——, subject to a condition for making void the same upon payment of the sd sum of £——, by four equal payments, &c., *state condition of bond* [*or*, AND WHAS the payment of the sd sum of £—— and interest, by the instalments and in manner aforesd, has been duly secured to the sd A. and B. as such exors aforesd, by the joint and several bond of the sd C. and D. bearing even date herewith, as the sd A. and B. do hereby acknowledge]: AND

Conveyance of realty and leaseholds.

WHAS, in further pursuance of the hereinbefore recited agreement, by an indre bearing even date with, but executed before and made between the same parties as these presents, *short recital of conveyance of freeholds and leaseholds by A. and B. to C. and D. in consideration of the sum apportioned as the value thereof;* NOW THIS INDRE,

Witnesseth.

&c., *Assignment by A. and B. to C. and D., in consideration of the apportioned value thereof and of the premises, of the share of X. in the goodwill and assets,* "other than the sd freehold and leasehold hereditaments," *as in Precedent* VI., *mutatis mutandis*, TO HAVE AND TO HOLD all the

Habendum to partners.

sd part, share, and premises hereby assigned UNTO the sd C. and D., their exors, admors, and assigns absolutely, according to the respective shares, rights, and interests of the sd C. and D. of and in the property of their present partnership (*a*): AND EACH of them, the sd A. and B., as to his own acts and defaults only, doth hereby for himself,

(*a*) If necessary, owing to the nature of the agreements, add a Power of Attorney, as in Precedent VI., with alterations to adapt it to several parties, and subsequently a covenant not to revoke power, as in Prec. VI.

his heirs, exors, and admors, covenant with the sd C. and D., their exors, admors, and assigns, *against incumbrances, to ratify, for further assurance; Joint and several covenants by C. and D. to pay debts, and indemnify A. and B., and estate of X., as in Precedent* VI., *mutatis mutandis*: AND THE sd A. and B. do and each of them doth hereby release and for ever discharge the sd C. and D., and each of them, their and each of their heirs, exors, admors, and assigns, and the sd C. and D. do and each of them doth hereby release and for ever discharge the sd A. and B., and their respective heirs, exors, and admors, and the estate and effects of the sd X., &c., *as in Precedent* VI., *with the necessary verbal alterations.* PREC. VIII. Mutual release.

IN WITNESS, &c.

Schedules of Freeholds and Leaseholds.

IX.

CONVEYANCE *and* ASSIGNMENT *by a* RETIRING PARTNER *to his* TWO CO-PARTNERS *of his* SHARE *in* FREEHOLD *and* LEASEHOLD PROPERTY, *and fixed* MACHINERY, *&c.* (*to accompany a deed of dissolution*). (*b*) PREC. IX.

Parties, A., *retiring partner*, 1; B. and C., *continuing partners*, 2. WHAS the sd A., B., and C. carried on the business of —— in co-partnership up to the —— day of —— now last past, and are entitled as part of their partnership property to the messuages, buildings, lands, and hereditaments specified in the first schedule hereto, which are of freehold tenure, and to the messuages, buildings, lands, and hereditaments specified in the second schedule hereto, which are of leasehold tenure, and are held under Recitals. Title to property.

(*b*) See the last Precedent.

PREC. IX.

an indre of lease, dated, &c., and made, &c., for the residue of a term of —— years from the —— day of ——, at the yearly rent of £——, and subject to the covenants and conditions of the sd lease, and to the fixed machinery and other erections and fixtures upon the sd respective freehold and leasehold premises, in the shares and proportions following, that is to say, the sd A. to —— equal —— parts thereof, and the sd B. and C. to the remaining —— equal —— parts thereof: AND WHAS the sd A. has retired from the sd firm as from the sd —— day of —— now last past, and the sd B. and C. continue to carry on the sd business of —— in co-partnership together: AND WHAS the sd B. and C. have come to a settlement with the sd A. in respect of his share and interest in the sd partnership, and the assets and effects thereof, and it has been agreed that they should pay to the sd A. the sum of £—— in full satisfaction of such share and interest: AND WHAS for the purposes of the act of parliament imposing an ad valorem duty on conveyances on sale the sum of £——, part of the sd sum of £——, has been apportioned as the estimated value of the share of the sd A. in the sd freehold and leasehold premises, and the fixed machinery and other erections and fixtures thereon: AND WHAS it has been agreed that the share and interest of the sd A. in the sd last-mentioned premises should be conveyed and assigned to the sd B. and C. in manner hereinafter mentioned: NOW THIS INDRE WITNESSETH that in pursuance of such agreement, and in consideration of the sum of £—— to the sd A. paid by the sd B. and C. out of moneys belonging to their sd new partnership, *receipt*, he the sd A. doth hereby grant, assign, and release unto the sd B. and C., their heirs, exors, admors, and assigns respectively, according to the nature of the sd respective premises: ALL THOSE —— equal undivided —— parts or shares, and all other the parts, shares, or interests of the sd A. of and in the freehold and leasehold messuages, buildings, lands, hereditaments, and premises specified in the sd first and second schedules hereto, and of and in all the

Retirement.

Account settled.

Apportionment for duty.

Agreement for conveyance.

Witnesseth.

Grant and assignment of shares.

fixed machinery and other erections and fixtures in or upon the same respective premises; *Estate clause*, p. 264: To HAVE AND TO HOLD all the sd parts, shares, interests, and premises hereinbefore expressed to be hereby granted and assigned respectively UNTO AND TO THE USE of the sd B. and C., their heirs, exors, admors, and assigns respectively absolutely, according to the respective shares, rights, and interests of the sd B. and C., as between themselves, of and in the property of their sd present partnership, but as regards the sd leasehold premises for the residue of the sd term of —— years, and subject to the payment of the sd rent, and the performance and observance of the covenants by the lessee and conditions of the sd indre of lease; *Covenants by A. with B. and C.*, "their heirs, exors, admors, and assigns," *for right to*, "grant and assign the sd parts, shares, interests, and premises hereinbefore expressed to be granted and assigned unto and to the use of the sd B. and C., their heirs, exors, admors, and assigns in manner aforesd, free from incumbrances, but as regards the sd leasehold premises for the term and subject as aforesd;" *For further assurance to*, "the sd B. and C., their heirs, exors, admors, and assigns, but as regards the sd leasehold premises for the residue then unexpired of the sd term," *see Precedent VI. Joint and several covenant by B. and C. to indemnify A. against rent and covenants of lease*, p. 286.

PREC. IX.

Habendum

to continuing partners.

IN WITNESS, &c.

X.

BOND *of* INDEMNITY *against partnership* DEBTS *on Dissolution.*

PREC. X.

Joint and several bond from A. and B. to C., p. 166. WHAS the sd A., B., and C., have carried on the business of, &c., under the firm of ——, at —— aforesd, from the —— day of ——: AND WHAS by an indre bearing even date with

Recitals. Partnership.

PREC. X.

Dissolution.

these presents, and expressed to be made, &c., it has been agreed that the sd partnership shall be considered as determined and dissolved from the —— day of ——, and by the same indre (among other things) the sd C. has assigned and released unto the sd A. and B., their exors, admors, and assigns, all the estate and interest of him the sd C. in the sd partnership business, and the moneys, debts, property, and effects belonging or due to the sd A., B., and C., as

Agreement.

partners, or in respect of the sd partnership : AND WHAS it was part of the arrangement for the dissolution of the sd partnership that the sd A. and B. should execute and give to the sd C. the above-written bond with such condition for

Condition.

making void the same as is hereinafter contained : NOW THE CONDITION of the above-written bond is such that if the sd A. and B. or one of them, their, or one of their heirs, exors, or admors, shall pay all and every the bills and notes of the sd partnership and all and every other the debt and debts and moneys due or growing due from the sd A., B., and C., or any or either of them in respect of the sd partnership, and discharge all the liabilities and perform all the engagements of the sd partnership to which the sd A., B., and C., or their respective heirs, exors, or admors, or any of them are, is, or shall be liable, and shall keep indemnified the sd C., his heirs, exors, admors, estate and effects against all actions, proceedings, losses, damages, costs, and expenses for or by reason of the non-payment, non-discharge, or non-performance of any of the sd bills, notes, debts, moneys, liabilities, or engagements, or of any act or thing in anywise relating thereto, Then the above-written bond shall be void, otherwise the same shall remain in full force and effect.

XI.

PREC. XI.

DEED *of* COVENANT *by* CONTINUING PARTNERS *to secure the* CAPITAL *of a* DECEASED PARTNER, *which,*

pursuant to the articles of partnership, is to remain as a LOAN *during the partnership term, the* INTEREST *being dependent on the rate of* PROFITS. (*c*)

Parties A., B., and C., *continuing partners*, 1; D. and E., *exors of deceased partner*, 2: WHAS the sd A., B., and C. are carrying on the business of —— in partnership together in continuation of the business lately carried on by the sd A., B., C., and K., *deceased partner*, under the style or firm of A. and Co., subject to the stipulations contained in an indre, dated, &c., whereby it was among other things provided, *continue recital of articles of partnership stating the clauses following, duration of partnership, death of one partner not to dissolve firm, annual general account, provision for death of partner where his capital is to remain as a loan during the term: Death of K., and will appointing D. and E. exors and probate*, p. 244: AND WHAS at the death of the sd K. his share in the capital of the sd partnership, as appearing by the general account taken by the partners on the —— day of —— preceding his death, amounted to £——: AND WHAS all moneys which were due or owing to the sd D. and E., as exors of the sd K., in respect of profits or interest on his capital up to his decease have been paid and satisfied, as the sd D. and E. do hereby acknowledge: AND WHAS in pursuance of the sd indre of, &c., the sd D. and E. have agreed with the sd A., B., and C., to leave the sd sum of £——, *share of capital*, as a loan to the sd firm of A. and Co. during the residue of the sd term of —— years upon having the repayment of the same with

Recitals.

Articles of partnership.

Share of deceased partner.

Profits of deceased partner paid out.

Agreement for loan.

(*c*) See 28 & 29 Vict. c. 86, s. 2; and as to the position of a secured creditor in such a case, see *Ex parte Sheil*, 4 Ch. D. 789. The payment of the deceased partner's share is often made by instalments, secured by a mortgage of the business premises. In that case, such of the recitals in the text as may be appropriate will be inserted, with the addition of recitals of the title of the firm to the freehold or leasehold property, to be comprised in the security and the deed, or deeds, by which the share of the deceased partner therein has been assigned to the continuing partners. The operative part of the deed will be in the usual form of a mortgage to secure the payment of money by instalments. See "MORTGAGES."

PARC. XI.

Witnesseth.

such interest as is hereinafter mentioned secured in manner hereinafter appearing: NOW THIS INDRE WITNESSETH that in pursuance of the sd agreement, and in consideration of the sd sum of £—— being left by the sd D. and E. as a loan to the sd firm of A. and Co., *joint and several covenant by A., B., and C., with,* D. and E., their exors, admors, and assigns, that the sd firm of A. and Co. will pay to the sd D. and E., or the survivor of them, or the exors of such survivor, or other the legal personal representatives or representative for the time being of the sd K., their or his assigns, the sum of £—— on the —— day of ——, *i.e., end of partnership term,* AND WILL in the meantime pay to them or him interest on the sd sum of £—— at the rate of £—— per cent. per annum by quarterly payments on the usual quarter-days, and a further sum by way of additional interest for each year, during which the sd firm of A. and Co. shall make any profits, equal to one equal —— part of such profits as appearing by the annual general account, such further sum to be paid immediately after the signature of such account, but so that the sum (if any) payable by way of additional interest as last aforesd upon the taking of the next annual account shall be an apportioned part calculated from the decease of the sd A. of the sum representing such share of profits as aforesd for the whole of the now current year; AND FURTHER that the business of the sd partnership shall at all times during the residue of the sd term be carried on strictly in accordance with the provisions and stipulations contained in the sd indre of, &c.: AND THAT it shall be lawful for the sd D. and E., and the survivor of them, or the exors of such survivor, or other the legal personal representatives or representative of the sd K., their or his assigns, to join in taking every annual general account of the sd firm during the sd term, and at all reasonable times to have access to and examine and take copies of or extracts from the books and accounts of the sd firm, [*or in lieu of last clause,* PROVIDED ALWAYS that the sd D. and E., and the survivor of them, &c., *as above,* shall not be entitled to join in taking

Covenant to pay principal.

And interest.

Carry on business according to articles.

Power to join in taking accounts.

Variation where executors are not to join

in taking accounts.

the annual general account of the sd firm, or to inspect the books or accounts of the sd firm, but the accounts of the sd business shall be made up by or under the direction of the partners for the time being or one of them every year on the —— day of——, or as soon after each such day as may be, and a proper account and balance-sheet shall be forthwith made out and furnished to the sd D. and E., or the survivor of them, &c., *as above*, and shall if required by them or him be verified by the statutory declaration of one of the sd partners, or some person who shall have been employed in making up the accounts, and such account and balance-sheet when so verified shall be conclusive and binding upon the sd D. and E., and the survivor of them, &c.]: PROVIDED ALWAYS, and it is hereby agreed and declared that nothing herein contained shall constitute the sd D. and E. partners in the sd firm of A. and Co.; PROVIDED ALSO that these presents and the security hereby created shall not be affected by any change in the persons constituting the sd firm of A. and Co. either by the death [or retirement] of any partner [or the admission of any new partner]; *Add, if desired, a covenant by A., B., and C. to indemnify the estate of K. against the liabilities of the firm.*

Executors not to be partners.

Security not to be affected by change in firm.

IN WITNESS, &c.

PATENTS.(a)

CLAUSES IN ASSIGNMENTS AND LICENCES.

Recital of grant of letters patent. Full form.

1. Whas by letters patent under the Great Seal of the United Kingdom, bearing date the —— day of ——, the sole and exclusive license, power, privilege, and authority of making, using, exercising, and vending an invention for improvements in the manufacture of —— in the United Kingdom of Great Britain and Ireland, the Channel Islands, and the Isle of Man, were granted to the sd A., *patentee*, his exors, admors, and assigns, for the term of fourteen years from the date of such letters patent, subject to a proviso for avoiding such letters patent [if the complete specification, which had been filed as therein mentioned, had not particularly described and ascertained the nature of the sd invention, and in what manner the same was to be performed], [*or, if the patent be granted on the filing of a provisional specification, say*, in default of the sd A. filing a proper specification of the sd invention within six calendar months from the date of such letters patent,] or in default of payment of the fee and stamp duty of £50 before the expiration of three years from the date thereof, and of the further fee of £100 before the expiration of seven years from such date.

(a) See The Patent Law Amendment Act, 15 & 16 Vic. c. 83; and 16 & 17 Vic. c. 5, and c. 115; 2 Davidson's Prec., 4th edit., p. 130, *et seq.* notes *a* to *i*, p. 629, *et seq.* notes *a* to *f*. Johnson, The Patentees' Manual.

II. WHAS on the —— day of —— the sd A. duly filed a proper specification of the sd invention, pursuant to the proviso in that behalf contained in the hereinbefore recited letters patent. Recital of complete specification being filed.

III. WHAS the sd A. is entitled, by assignment dated, &c., to letters patent under the Great Seal of the United Kingdom, dated, &c., and originally granted to B. for "Improvements in, &c." Title to patent by assignment.

IV. WHAS the sd A. is the inventor and patentee of an invention for "Improvements in, &c.," the letters patent for which bear date, &c. Short recital of title to patent.

V. WHAS the sd A. is entitled to the sole and exclusive license, &c., *as in recital of grant of letters patent* [in the Republic of France, which was granted to him by a *brevet d'invention* dated, &c., and which will expire on, &c.] (*b*). Recital of foreign patent.

VI. NOW THIS INDRE WITNESSETH that in pursuance of the recited agreement, and in consideration of the sum of £—— now paid by the assignee to the patentee (the receipt whereof is hereby acknowledged) [and of the royalties and payments hereinafter reserved and made payable, and the covenants and agreements on the part of the assignee hereinafter contained], he, the patentee, doth hereby assign and transfer unto the assignee ALL THAT the sd invention of improvements in —— and the sd letters patent for the same, and the exclusive benefit and advantage of the same, [and also the right of the patentee to apply for and obtain an extension and renewal of the sd letters patent and of the term of years granted thereby] and all the interest of the patentee therein, TO HAVE AND TO HOLD the same UNTO the assignee for the residue of the sd term of fourteen years granted by the sd letters patent [and any further term to be granted by any extension or prolongation of the same] [subject to the payment of the royalties and moneys hereinafter reserved and made payable, and to the performance and observance of the covenants and Assignment of patent absolute, or by way of mortgage.

(*b*) See, as to foreign and colonial patents, Johnson, The Patentees' Manual, Appendix.

agreements on the part of the assignee, and conditions hereinafter contained] [*for a mortgage say*, subject to the proviso hereinafter contained for the redemption of the same premises].

Grant of license.

VII. THE PATENTEE doth hereby grant unto the licensee [the sole, full, and exclusive] license to use and exercise the sd invention during the term of —— years from the date of this license, [*or*, the unexpired residue of the term of the sd letters patent, or any renewal or extension thereof] and to sell and dispose of all —— manufactured according to the sd invention, when and as the licensee shall think fit, for his absolute use and benefit.

The same. Various restrictions.

VIII. THE PATENTEE doth hereby grant unto the licensee full [and exclusive] license to use and exercise the sd invention [to the extent of —— and with reference to —— only] [for the purpose of manufacturing —— only] [at any place or places within a radius of —— miles from ——, but not elsewhere] [in England only] during the term of —— years from the —— day of ——, and to sell and dispose of all —— manufactured [within the limits aforesd, *or*, "England" only] according to the sd invention, at any time during the sd term [or within six calendar months from the expiration thereof].

Covenant to pay royalties. Variations where there is a fixed minimum rent.

IX. THE LICENSEE shall pay to the patentee [yearly during the sd term, and so in proportion for any less time than a year, the sum of £——, as a fixed or minimum annual rent, by equal quarterly payments, on the —— day of ——, &c., the first of such payments to be made on the —— day of —— next, in respect of which sd annual sum of £—— the licensee may manufacture or make [and sell] —— [cwt. of] —— according to the sd patent, and shall also pay to the patentee] for every —— [cwt.] [in excess of —— [cwt.]] of —— manufactured or made [and sold] by the licensee according to the sd invention, in every half-year of the said term, commencing on the —— day of —— and —— day of —— [whether the same shall have been sold or not] the royalty or sum of £——, to become due and be paid at

the end of two calendar months after the expiration of the half-year during which the same [such excess] shall have been manufactured or made [sold].

Licensee to keep accounts, and permit inspection.

X. THE LICENSEE shall at all times during the continuance of this license keep accurate and regular accounts in separate books containing full entries and particulars of all —— manufactured or made by him under this license [and of the sales thereof], and of all particulars in relation thereto, which may be material for the purpose of shewing the amount payable to the patentee, by way of royalty as aforesd: And the sd books of account, and all other documents in the possession of the licensee relating to the sd invention, manufacture, and premises, shall be kept at the place of business of the licensee, and shall at any time, if required, be produced for the inspection of the patentee, or any person appointed by him, who shall be at liberty to make copies of or extracts from any of the accounts or matters therein contained.

To furnish half-yearly account, and verify same.

XI. THE LICENSEE shall within ten days after the expiring of every such half-year furnish to the patentee or his agent a full account and statement in writing of all —— manufactured or made as aforesd during the preceding half-year, and every such statement, and also any of the entries in the books of account to be kept as aforesd, shall, if required by the patentee or his agent, be verified by the statutory declaration of the licensee, or some person or persons in his employment who shall be approved of for that purpose by the patentee.

To affix labels.

XII. THE LICENSEE shall affix upon every article [box or packet containing articles] made or manufactured by him under this license in a conspicuous manner a label or plate containing the inscription "A's patent, 18—," such labels or plates to be supplied by the patentee, and shall not sell any articles so made or manufactured without such a label or plate.

The same to machines.

XIII. ALL MACHINES to be used by the sd licensee under this license shall have a plate, containing the inscription, "A's patent, 18—," affixed to the same on some con-

spicuous part thereof, to be named by the patentee for that purpose (such plates to be furnished by the patentee): And no such plate shall be removed from any machine to any other without his previous consent, and no machine shall be considered as duly licensed or authorised to be used unless such plate be affixed thereto.

Power to patentee to inspect factory.

XIV. THE PATENTEE shall be at liberty at any time during the continuance of this license to enter upon any factory or place of business of the licensee in which the manufacture of —— shall be carried on at any reasonable hour in the daytime to inspect the same, and the works thereof, and all —— manufactured, or in course of manufacture, in such factory or place.

Licensee not to use invention otherwise than according to license.

XV. THE LICENSEE shall not, either directly or indirectly, and either by himself or any agent or agents, use or exercise the sd invention otherwise than in accordance with these presents.

Patentee to give licensee, or assignee, assistance.

XVI. THE PATENTEE shall, whenever required, give to the licensee [assignee] such assistance and information respecting the sd invention and the mode of working and using the same, and all processes connected therewith as may be necessary for enabling him to use and exercise the sd invention to the best advantage.

Patentee to communicate further improvements to licensee or assignee.

XVII. IF AT any time or times hereafter during the continuance of this license the patentee shall invent, discover, or make any improvement or improvements in the sd invention or the mode of working or using the same, or which may be applied to the sd manufacture, or shall become the owner of any such improvement or improvements (whether patented or not), then and in every such case he shall communicate such improvement or improvements to the licensee, or give him full and sufficient information, instructions, and assistance respecting the mode of working and using the same, and so far as practicable render the same available at the expense of the licensee for his benefit [within the limits aforesd,] and the licensee shall be entitled to use and exercise the same without paying any further or other

royalty, premium, or compensation to the patentee in respect thereof, [and the patentee shall forthwith communicate a full and perfect description of such improvement or improvements to the licensee or assignee, and do every act which may be necessary or convenient for enabling him to obtain letters patent for vesting the exclusive right thereto in him or such other person or persons as he may appoint.]

Provision as to infringements.

XVIII. IN CASE the sd letters patent or any extension or renewal thereof shall be infringed, the patentee, *or*, "licensee," shall forthwith, after notice of such infringement, at his own costs, take all necessary proceedings for effectually protecting and defending the same, and in default of his so doing the licensee, *or*, "patentee," shall be at liberty by notice in writing, given to or left at the usual or last known place of business or residence of the patentee, *or*, "licensee," to determine this agreement.

The same.

XIX. IN CASE the sd letters patent [or any extension or renewal thereof] shall be infringed, it shall be lawful for the licensee, at his own costs, but in the name of the, *patentee*, to take all necessary legal proceedings for effectually protecting and defending the same.

The same.

XX. THE PATENTEE shall at all times during the continuance of this license at his own costs and charges by all means in his power protect and defend the sd letters patent from all infringements, whether within or outside the limits aforesd by any person or persons whomsoever, and, in default of his so doing, the rent and royalties hereby reserved shall cease to be payable, but this license shall nevertheless remain in full force, and in case of the sd rent and royalties so ceasing, such cessation shall be taken as a satisfaction of the covenant by the patentee for such protection as last aforesd, or any liability of the patentee in respect thereof.

Licensee not to dispute validity of patent.

XXI. THE LICENSEE shall not at any time or times hereafter dispute the validity of the sd patent.

Licensee

XXII. THE LICENSEE shall not assign or transfer this license or any part thereof, or grant any sublicense to any

not to assign or grant sub-licenses.

person or persons whomsoever [without the consent in writing of the patentee].

Patentee not to use invention or grant other licenses.

XXIII. THE PATENTEE shall not at any time during the continuance of this license use or exercise the sd invention, or any such future improvement or improvements as aforesd, or grant any license to any other person or persons whomsoever to use or exercise the same or any such improvement or improvements [or to use any machine or machines comprising the same] [within the limits aforesd] [for the purpose of manufacturing ——] [without the consent in writing of the licensee].

Power to either party to determine license.

XXIV. PROVIDED ALWAYS, and it is hereby agreed and declared, that this license may be determined at any time after the first six calendar months by the patentee, or by the licensee, on giving to the other of them or leaving at his usual or last-known place of business or abode three calendar months' previous notice in writing of his intention so to do, and at the expiration of such notice these presents, and all the covenants, agreements, and provisions herein contained shall cease and be void, but without prejudice to the remedies of either party for the recovery of any moneys then due to him hereunder.

Power to determine license on non-payment of royalties, &c.

XXV. PROVIDED ALWAYS, and it is hereby agreed and declared, that if the [rent], royalties, or sums hereby made payable, or any part thereof, shall at any time be in arrear or unpaid for twenty-one days after the same shall have become due (whether any legal or formal demand thereof shall have been made or not), or if the licensee shall become bankrupt or enter into any arrangement or composition with his creditors, or shall make default in performing or observing any of the covenants, agreements, or considerations hereinbefore contained, and, on his part, to be performed or observed, then, and in any such case, it shall be lawful for the patentee, by notice in writing given to the licensee, or left for him at his usual or last-known place of abode or business, to revoke this license, which shall thereupon become void without prejudice to any right of action or remedy

of the patentee for the recovery of any moneys then due to him hereunder, or in respect of any antecedent breach of any of the covenants or agreements of the licensee hereinbefore contained.

Power to patentee to determine license if not worked.

XXVI. IF THE LICENSEE shall discontinue the manufacture of ——, according to the sd invention, or shall not manufacture [and sell] at least ——, according to the sd invention, in any one year commencing on the —— day of ——, the patentee shall be at liberty by notice in writing given to the licensee or his sd successor, or left at his usual or last-known place of abode or business, to determine this license, in which case the same shall cease and become void, but without prejudice to any right of action or remedy of the patentee for the recovery of any moneys then due to him hereunder, or in respect of any antecedent breach of any of the covenants of the licensee hereinbefore contained, *or*, "without prejudice, as aforesd."

Power to patentee to avoid license if it shall become vested in more than one person.

XXVII. PROVIDED ALWAYS, that if the license hereby granted, or the benefit thereof, shall at any time during the sd term become vested in more than one person [other than persons trading and using the sd license together as co-partners] it shall be lawful for the patentee, by notice left at the place of business or the usual or last-known place of abode of any of such persons, to revoke this license, in which case the same shall cease and become void, but without prejudice, &c., *as in last form*.

Proviso determining license on death of licensee.

XXVIII. PROVIDED ALWAYS, that if the licensee shall die during the sd term then this license shall become void, but without prejudice, &c., *as in form* XXVI.

Provision as to stamp duty.

XXIX. PROVIDED ALWAYS, and it is hereby agreed, that nothing herein contained shall render it incumbent on the patentee to pay the stamp duty payable for keeping up the sd patent at the end of the first three or seven years thereof; but in the event of the same becoming void by nonpayment of such stamp duty, this license and everything herein contained shall likewise become void, but without prejudice, &c., *as in form* XXVI.

Agreement not to create partnership.

XXX. NOTHING HEREIN contained shall constitute a partnership between the sd parties [or their respective exors, admors, or assigns].

Covenants for title in license or assignment. (*c*)

XXXI. AND THE patentee doth hereby for himself, his heirs, exors, and admors, covenant with the licensee [assignee] that, notwithstanding anything by the patentee done, omitted, or knowingly suffered, the sd letters patent are now valid and subsisting, and that the patentee now hath power to grant a license to use [to assign] the sd letters patent during the term and in manner aforesd, [free from incumbrances] AND THAT the patentee will not at any time during the sd term enter a disclaimer (*d*) or memorandum of alteration of the sd letters patent [or of any renewal or prolongation of the same] without the consent in writing of the licensee [assignee]. [AND THAT the patentee, and every person claiming under or in trust for him, will at all times, at the cost of the assignee, execute and do all such assurances and acts for further assuring the sd letters patent and premises to the assignee for the residue of the sd term, as by him may be reasonably required.]

Covenants for title in mortgage.

XXXII. AND the mortgagor doth hereby for himself, his heirs, exors, and admors, covenant with the mortgagee that the sd letters patent are valid and subsisting, and that the mortgagor now has power to assign the sd letters patent and premises unto the mortgagee for the term and in manner aforesd; AND THAT the mortgagor will not at any time (*d*) during the sd term enter a disclaimer or memorandum of alteration of the sd letters patent [or of any renewal or

(*c*) If there be any doubt as to the validity of the patent, the covenant that the patent is valid, etc., will, if so intended, be omitted, and the following proviso added at the end of the deed: PROVIDED ALWAYS, and it is hereby agreed and declared, that these presents shall not be construed as a warranty by the patentee for the novelty or utility of the sd invention, the original validity of the sd letters patent, or the sufficiency of the sd specification, or the filing thereof.

(*d*) See *Wallington* v. *Dale*, 7 Ex. 888.

prolongation of the same] without the consent in writing of the mortgagee; [AND THAT the mortgagor will pay all stamp duties which may become payable in respect of the sd letters patent [or any renewal or prolongation of the same] on the first day on which the same respectively shall become payable]; AND THAT it shall be lawful for the mortgagee to hold and enjoy the sd premises without any interruption by any person whatsoever free from all incumbrances; AND THAT the mortgagor and every other person claiming any interest in the sd letters patent and premises will at all times, at the cost until foreclosure or sale of the mortgagor, and afterwards of the person or persons requiring the same, execute and do all such assurances and acts for further assuring the sd premises to the mortgagee for the residue of the said term, or any renewal or prolongation thereof, and enabling him to obtain the full benefit thereof as may be reasonably required.

Reservation to patentee of right to grant other licenses.

XXXIII. NOTHING HEREIN contained shall, except as herein expressly provided, affect the right of the patentee to grant licenses to any other person or persons to use or exercise the said invention [for the purpose of manufacturing —— or otherwise] [at any place or places outside the limits aforesaid]. [Provided that no such license shall be granted on terms more favourable or advantageous to the licensee or licensees than these presents.]

Interpretation clause.

XXXIV. IN THE construction of these presents the expression "the patentee" shall be deemed to include the sd A., his exors, admors, and assigns; and the expression "the licensee" *or* "assignee" shall be deemed to include the sd B., his exors and admors, [and "assigns," *or* "permitted assigns"] unless such construction shall be excluded by or repugnant to the context, or otherwise inconsistent with the provisions herein contained.

PRECEDENTS.

I.

PREC. I.

ASSIGNMENT *of* LETTERS PATENT. (*e*)

Parties, A., *patentee,* hereinafter called the patentee, 1; B., *assignee,* hereinafter called the assignee, 2; *Recite title to patent,* p. 970 *or* 971. AND WHAS the patentee has agreed with the assignee for the sale to him of the sd letters patent and the exclusive and absolute benefit thereof, for the sum of £——; NOW THIS INDRE WITNESSETH, &c., *assignment of patent,* p. 971; *Covenants for title,* p. 978; *Interpretation clause,* p. 979.

IN WITNESS, &c.

II.

PREC. II.

ASSIGNMENT *of* RIGHT *of an* INVENTOR *to* PATENT *the* INVENTION *in* FOREIGN COUNTRIES. VARIATIONS, *where the* ASSIGNMENT *extends to* SUBSEQUENT IMPROVEMENTS *patented.*

Recitals. Parties, A., *inventor,* 1; B., *assignee,* 2; *recite grant of letters patent in the United Kingdom,* p. 970: AND WHAS it has been agreed between the parties hereto that the sd B. shall have the right of procuring patents or other like privileges for using the sd invention in the countries of, &c., or in such of them or such parts thereof respectively as he shall think fit, upon the terms and in the manner hereinafter expressed,

Agreement.

(*e*) This must be registered under 15 & 16 Vic., c. 83, s. 35.

and that the sole right of obtaining such patents or privileges and all the rights and interest of him the sd A., to and in the sd invention and the use thereof in the several countries aforesd, shall accordingly be assigned to the sd B. in manner hereinafter appearing: NOW THIS INDRE WITNESSETH that, *consideration*, *receipt*, and in consideration of the covenants and agreements on the part of the sd B. hereinafter contained, the sd A. doth hereby grant and assign unto the sd B., his exors, admors, and assigns, THE FULL and exclusive right in the name or names and as the attorney or attornies of the sd A., his exors or admors, or otherwise, as the case may require, but at the costs of the sd B., his exors, admors, or assigns, to apply for and obtain patents or other like grants or instruments for vesting in the sd B., his exors, admors, or assigns, or in such other person or persons as he or they shall think fit, the sole and exclusive right and privilege of making, using, exercising, and vending the sd invention in the sd several countries of, &c. respectively, or any of them or any part thereof respectively, AND ALSO all the right and power of him the sd A. as such inventor as aforesd or otherwise, to work, use, exercise, and vend the sd invention and every part thereof in the sd several countries respectively, and every of them and every part thereof respectively, TO HAVE AND TO HOLD the sd premises hereby granted and assigned UNTO the sd B., his exors, admors, and assigns, to and for his and their own absolute use and benefit: AND EACH of them the sd A. and B. doth hereby for himself, his heirs, exors, and admors, so far as the covenants and agreements hereinafter contained are or ought to be performed or observed by him or them, covenant with the other of them, his exors, admors, and assigns, in manner following, (that is to say):—

Witnesseth.

Assignment of right to obtain patents abroad.

Habendum

to assignee.

Mutual covenants.

1. THE SD A. shall forthwith furnish to the sd B., his exors, admors, or assigns, a true and correct copy of the specification of the sd invention as filed or about to be filed, and also shall forthwith enable the sd B., his exors, admors,

Patentee to furnish specification.

PREC. II.

or assigns, to prepare a full and perfect description of the sd invention and the mode of working the same, so as to enable him or them to obtain good and valid patents, grants, or instruments, vesting in him or them the exclusive right and privilege of making, using, and exercising the sd invention and every part thereof, in the sd several countries of —— or any of them.

Patentee to communicate improvements.

[2. *Patentee to communicate further improvements to assignee*, p. 974, *mutatis mutandis*, *saying*, "do every act which may be necessary or convenient for enabling him or them to obtain the rights and privileges aforesd in the sd several countries, and to procure patents, grants, or other instruments in such respective countries, or any part thereof respectively, for vesting the exclusive right thereto in him or them, or in such other person or persons as he or they may appoint for his and their absolute benefit."]

Patentee to assign foreign patents to assignee.

3. In case any such patent, grant, or instrument as aforesd, for securing the rights and privileges aforesd, in any of the sd countries, shall be granted or made to or in favour of the sd A., his exors or admors, then and in every such case he or they shall forthwith or at any time thereafter upon the request and at the costs of the sd B., his exors, admors, or assigns, transfer such patent, grant, or instrument, and all the benefit thereof unto the sd B., his exors, admors, or assigns, or as he or they may direct, and in the meantime shall stand possessed thereof in trust for him and them.

Patentee to assist in obtaining foreign patents.

4. And the sd A., his exors and admors, shall also at any time upon the request and at the costs of the sd B., his exors, admors, or assigns, execute and do every instrument, act, and thing, which may be necessary or convenient for the purpose of enabling him or them to obtain every or any such patent, grant, or instrument as aforesd, and the full benefit of all the rights, privileges, and premises hereinbefore assigned or transferred to him and them, or agreed so to be.

Assignee to have rights of

5. The sd B., his exors, admors, and assigns, shall be entitled to and have full power to dispose of, or deal with, all

the patents, grants, instruments, and premises so assigned, or transferred, or agreed so to be, as the sole and absolute owner and owners thereof respectively without being subject to any control or interference whatsoever of or by the sd A., his exors, admors or assigns.

absolute owner.

6. The sd B., his exors or admors, shall pay to the sd A., his exors, admors, or assigns, a moiety of all the net gains and profits which he, the sd B., his exors or admors, shall at any time or times hereafter obtain or receive from, or by means of such patents, grants, or instruments as aforesd, or such of them as shall or may be obtained from or by means of the sd invention [or improvements], or any sales or licenses, or other dispositions of or dealings with the same [(whether for the sd invention or any such improvements as aforesd)], after paying and deducting all costs, charges, losses, damages, and expenses whatsoever, which the sd B., his exors or admors, may pay or incur in or about the obtaining or procuring, or endeavouring to obtain or procure, such patents, grants, and instruments, or any of them, or in or about bringing the sd invention, or any part thereof, [or any such improvements as aforesd], into use in the sd several countries, or any of them, or in or about any such sales, licenses, or other dispositions or dealings as aforesd, together with interest at the rate of £5 per cent per annum upon such costs, charges, losses, damages, and expenses respectively, from the time of the payment thereof: And shall, on the 31st day of December in each year, when the amount of such net gains and profits as aforesd, in the hands of the sd B., his exors, admors, or assigns, and not previously accounted for and divided, shall amount to the sum of £—— or upwards, or within —— days thereafter, pay over one moiety of such amount to the sd A., his exors, admors, or assigns.

Assignee to pay a moiety of net profits to patentee.

7. The sd B., his exors, admors, and assigns, shall keep true and correct accounts of all such receipts and disbursements as aforesd, and all other material particulars relating to the premises, and at any time on demand furnish to the sd A., his exors, admors, or assigns, a copy of such accounts,

Assignee to keep accounts.

PREC. II.

or of the portion or portions thereof not previously furnished to him or them, and permit him or them to inspect the same accounts, and all documents in the possession or power of the sd B., his exors, admors, or assigns, relating to the premises.

Assignment not to constitute partnership.

8. [NOTHING HEREIN contained shall constitute a partnership between the sd parties or their respective exors, admors, or assigns.]

Present patent not to be prejudiced.

9. NOTHING HEREINBEFORE contained shall prejudice or affect the right of the sd A. to his sd letters-patent for the sd invention in the United Kingdom.

IN WITNESS, &c.

III.

PREC. III.

AGREEMENT *for* SALE *of* PATENT. (*f*)

Parties.

AGREEMENT made the —— day of —— BETWEEN A. of, &c., hereinafter called the patentee of the one part, and B., carrying on business as —— at, &c., hereinafter called the assignee of the other part.

Agreement for sale.

1. THE PATENTEE agrees to sell his patent for ——, dated, &c., to the assignee in consideration of the sum of £—— paid to the patentee by the assignee upon the execution of this agreement, the receipt whereof is hereby acknowledged, and of the further payments hereinafter mentioned.

Royalty.

2. THE ASSIGNEE shall also pay to the patentee during the residue of the term of the sd patent, if the assignee shall so long live, and shall continue to carry on the aforesd business, the sum of £—— for every —— of whatever size and description, manufactured according to the sd patent, which shall be sold by the assignee.

Accounts.

3. THE ACCOUNTS between the sd parties shall be settled half-yearly on the —— day of ——, and the —— day of ——.

(*f*) This should be registered under 15 & 16 Vic., c. 83, s. 35.

4. If the assignee shall discontinue the manufacture of or shall not manufacture and sell at least —— in any one year, commencing on the —— day of ——, the patentee shall be at liberty by notice in writing given to the assignee, or left at his usual or last known place of abode in England to determine this agreement.

Power for patentee to determine agreement if patent not sufficiently worked.

5. *Provisions as to infringement*, p. 975.

6. If the sd letters-patent shall be judicially determined to be invalid then these presents shall thenceforth become void but without prejudice to the right of the patentee to recover any moneys then due to him hereunder.

If patent invalid, agreement to be invalid.

7. If the assignee shall, before the expiration of the term of the sd patent, retire from the aforesd business or die, he, or his representatives, shall within —— months after such retirement or death, at his or their own expense cause or procure his successor in the sd business to enter into a similar agreement with the patentee for the payment to him during the residue of the sd term of the sd sum of —— on all —— manufactured according to the sd patent, which shall be sold by such successor, with a similar proviso for the event of such successor dying or retiring from the sd business: And in default of such substituted agreement being entered into within the time aforesd this present agreement shall become void, but without prejudice to the right of the patentee to receive any moneys then due to him hereunder: And the sd patent shall thereupon revert to and become the absolute property of the patentee.

On retirement or death of assignee, successor to enter into similar agreement.

8. *Interpretation clause*, p. 979.

In witness, &c.

IV.

PREC. IV.

MORTGAGE *of* LETTERS PATENT. (*a*)

Parties. Parties, A., hereinafter called the mortgagor, which expression shall include his exors, admors, and assigns, if the context so requires or admits, 1; B., hereinafter called

Recitals. the mortgagee, which expression, &c., *as above*, 2; *Recite the grant of letters patent*, p. 970; *Filing of specification*, p. 971; *Agreement for loan*, p. 691; *First testatum covenant for payment as in* p. 751, *Prec.* VII; AND THIS INDRE

Witnesseth. ALSO WITNESSETH that in further pursuance, &c., *assignment of letters patent*, p. 971 (*b*); *Proviso for redemption of the* "sd invention, letters patent, and premises hereinbefore expressed to be hereby assigned," p. 702, *form* II.; *Covenant by mortgagor*, that he, the mortgagor,

Covenant by mortgagor to pay stamp duties. will pay the respective stamp duties of £50 and £100 for keeping up the sd patent in the United Kingdom, at least two calendar months before the expiration of the prescribed periods of three years and seven years respectively, if at the sd respective times any money shall remain on the security of

To protect patent from infringements. these presents; AND FURTHER that he, the mortgagor, will from time to time, so long as any money shall remain on the security of these presents, use his best endeavours to discover any infringement now already, or hereafter to be made of the sd letters patent hereby mortgaged, or any extension or renewal thereof, and will make known the same, when discovered, to the mortgagee, and will, if required in writing so to do by the mortgagee, either himself take legal proceedings for the purpose of stopping such infringement, or in case the mortgagee shall take such proceedings, will do everything in his power for the purpose of rendering the

(*a*) To be registered under 15 & 16 Vic., c. 83, s. 35.

(*b*) Substitute throughout "mortgagor" and "mortgagee" for "patentee" and "licensee" in the forms.

same effectual, and will, whether such proceedings be effectual or not, pay on demand the costs of the mortgagee relating thereto as between solicitor and client; AND FURTHER that in case the mortgagor shall neglect or refuse to make the payments aforesd, or any of them, it shall be lawful for the mortgagee to pay the same, AND THAT all moneys or expenses which shall be paid or incurred by the mortgagee in the exercise of any of the powers hereinbefore contained, with interest for the same at the rate of £—— per cent. per annum, from the time or respective times of the same having been paid or expended, shall be repaid by the mortgagor to the mortgagee on demand, and in the meantime shall be charged upon the sd premises hereby mortgaged. PROVIDED ALWAYS, and it is hereby agreed and declared, that at any time or times before the mortgagee shall have become entitled to exercise the power of sale hereinafter contained, it shall be lawful for the mortgagor, in the name and as the attorney of the mortgagee, to grant licenses for the use of the sd invention and letters patent for such term or terms of years, upon such conditions and in such manner as he may think fit, but so that the mortgagor shall not be authorised to enter into any covenants in the name of the mortgagee, or to subject him to any personal liability, and so that no exclusive license shall be granted without the consent in writing of the mortgagee, and so that on every such license there be reserved the best rent or royalty that can conveniently be gotten, without taking anything in the nature of a fine or premium, and so that there be contained in every such license a power to the mortgagee to revoke the said license in case of non-performance of the conditions therein contained, and on non-payment of the rents or royalties thereby reserved, and so that the licensee or licensees do execute a counterpart or duplicate thereof, and do thereby covenant for the due payment of the rents or royalties thereby reserved; *Power to mortgagee*, "at any time or times after he shall have become entitled to exercise the sd

Power for mortgagee to make payments, to be charged on mortgaged premises.

Power for mortgagor to grant licenses until default.

Power for mortgagee to grant

PREC. IV.

licenses after default.

Power of sale.

power of sale, to grant licenses (whether exclusive or absolute or unrestricted or not) for the use of the said invention and letters patent for such term or terms of years, upon such conditions and in such manner as he may think fit, and in consideration of a sum or sums in gross, or any rents or royalties or otherwise"; *Power of sale*, p. 708, *form* III., *mutatis mutandis, extending the trusts of sale moneys to* "any gross sum or sums, rents, or royalties received upon the granting or in respect of any license or licenses"; *Covenants by mortgagor for title*, p. 978, No. XXXII.

IN WITNESS, &c.

V.

PREC. V.

LICENSE *to* USE LETTERS PATENT, *with* VARIATIONS *for an* EXCLUSIVE *or* RESTRICTED LICENSE, *and for the* LICENSEES *being* PARTNERS *or a* COMPANY. (*c*)

Recitals.

Agreement.

Witnesseth.

Parties, A., *patentee*, 1; B., [and C.,] *or*, "the —— Company, Limited," 2. *Recite A.'s title to patent:* AND WHAS the sd A. has agreed with the sd B. [and C.,] *or*, "the sd Co.," to grant him [them] a license to use and vend the sd invention [to the extent and subject to the restrictions, covenants, and agreements, and] upon the terms hereinafter expressed and contained: NOW THIS INDRE WITNESSETH that in pursuance of the sd agreement, and in consideration of the [sum of £—— upon the execution hereof paid by the sd B. [and C.,] *or*, "the sd company" to the sd A., (the receipt whereof is hereby acknowledged) and of the rent and] royalties or sums hereinafter reserved or made payable to the sd A. [and of the covenants and agreements on the part of the sd B. [and C.,] *or*, "the sd Co." hereinafter contained,] the sd A. (hereinafter

(*c*) This should be registered under 15 & 16 Vic., c. 83, s. 35.

called the patentee, which expression shall be deemed to include his exors, admors, and assigns, unless such construction is excluded by the context or is otherwise inconsistent with the provisions herein contained), doth hereby grant unto the sd B., his exors, admors, and [permitted] assigns (*d*), *or*, "the sd B. and C., and the survivor of them, and the exors or admors of such survivor, their or his partners or partner for the time being and [permitted] assigns" (*d*), *or*, "the sd Co. and their [permitted] assigns" (*d*), (all of whom are hereinafter included in the expression the licensee[s], unless such construction is excluded by the context or is otherwise inconsistent with the provisions herein contained,) *continue grant of license*, p. 972, No. VII., or No. VIII.: AND IT IS HEREBY mutually covenanted and agreed between and by the sd respective parties hereto [and so that the liability of the sd B. and C. hereunder shall be joint and several] as follows, namely: *Insert such of the clauses following as may be appropriate in numbered paragraphs, with the necessary verbal alterations for the case of several licensees or a company:— Covenant to pay rent and royalties*, p. 972; *Licensee to keep accounts and permit inspection*, p. 973; *Licensee to furnish accounts half-yearly and verify same*, p. 973; *To affix labels*, p. 973; *Or name-plates*, p. 973; *Power to patentee to inspect factories*, p. 974; *Licensee* (*e*) *not to use invention otherwise than according to license*, p. 974; *Patentee to give licensee assistance*, p. 974; *Patentee to communicate improvements to him*, p. 974; *Provisions as to infringements*, p. 975; *Licensee not to dispute validity of patent*, p. 975; *Licensee not to assign or grant sub-licenses*, p. 976; *Patentee* (*f*) *not to use invention or grant other licenses*, p. 976; [*Power*

Grant of license.

Mutual covenant.

Clauses.

(*d*) If the license is not to be transmissible on the licensee's death, omit the words "exors, admors." If it is not to be assignable, omit "assigns;" and if it is to be assignable only with consent of the patentee, insert "permitted."

(*e*) This clause will be omitted in an exclusive license.

(*f*) This clause will be inserted if the license is exclusive.

PREC. V. *to either party to determine license*, p. 976]; *Power to determine license on nonpayment of royalties, &c.*, p. 976; *Power* (*g*) *to patentee to determine license if not worked*, p. 977; [*Power* (*h*) *to patentee to determine license if it becomes vested in more than one person*, p. 977;] [*Proviso* (*a*) *determining license on death of licensee*,] *Provision as to stamp duty*, p. 977; *Covenants for title*, p. 978; [*Reservation of right to patentee to grant other licenses*, p. 979]; *Arbitration clause, see* ARBITRATION, p. 123.

IN WITNESS, &c.

VI.

PREC. VI. LICENSE (*not exclusive*) *by* DEED POLL *to* USE *a* PATENT *in consideration of a* SUM *paid down. A short form.* (*b*)

KNOW ALL MEN BY THESE PRESENTS that I, A., *patentee*, of ——, do hereby in consideration of the sum of £—— now paid to me by B., of ——, the receipt whereof I do hereby acknowledge, give liberty and license to the sd B. to make, use, exercise, and vend the invention mentioned or referred to in certain letters patent under the great seal of the United Kingdom, bearing date the —— day of —— for the term of —— years from the date hereof, but not so as to warrant the original validity of the sd letters patent.

IN WITNESS, &c.

(*g*) This clause will be inserted if the license is exclusive.

(*h*) This clause will, of course, be omitted if the license is not transmissible, or is granted to two or more.

(*a*) This clause will, of course, be inserted only if the license is not to be transmissible on the death of the licensee.

(*b*) This should be registered under 15 & 16 Vic. c. 83, s. 35.

VII.

AGREEMENT *for* WORKING *a* PATENT. (*c*)

PREC. VII.

AGREEMENT made this —— day of —— BETWEEN A., of, &c., of the one part, and B., of, &c., of the other part: WHAS the sd A. is the inventor of and has obtained provisional protection for certain improvements in ——, and he has expended the sum of £—— in obtaining such provisional protection and manufacturing specimens of articles forming the subject of the sd invention, and otherwise testing the same, and with a view to promote the success thereof, and obtain letters patent, he has requested the sd B. to enter into the arrangements hereinafter expressed: NOW IT IS AGREED as follows, viz:—

Parties.

Recital of title to patent and agreement.

Agreement.

1. THE SD B. shall expend a further sum of £—— in or towards testing and perfecting the sd invention, and obtaining letters patent for the same, including the costs of and relating to this agreement, and each of the sd parties shall bear and pay one-half of any further expenses in addition to the sd last mentioned sum of £—— which may be incurred in testing and perfecting such invention, and obtaining the grant of such letters patent, and assigning the same as hereinafter mentioned, provided that the sd B. shall not be under any obligation to advance a larger sum in the whole than £—— in respect of the expenses hereinbefore mentioned.

As to expenses of perfecting and patenting.

2. THE SD A. in consideration of the payments agreed to be made by the sd B. aforesd, shall use his best endeavours to perfect the sd invention and to obtain the grant of the sd letters patent in his own name, and shall, whenever required after the granting of such letters patent, assign the same, together with all benefits to be derived from the same or from the sd invention, and all improvements hereafter to

Inventor to obtain letters patent and vest same in parties as tenants in common.

(*c*) This should be registered pursuant to 15 & 16 Vic. c. 83, s. 35, as soon as the patent is completed.

PREC. VII.

be made by the sd parties or either of them therein, or in the mode of making the articles which are the subject thereof, so that the same premises may be legally and beneficially vested in the sd parties hereto as tenants in common in the shares following, namely, the sd A. —— shares, and the sd B. —— shares, and the sd parties hereto shall as well before as after the sd assignment be entitled to the same premises in the shares last aforesd.

Shares in which capital is to be advanced.

3. IN CASE it shall appear to the sd parties advisable to work the sd patent, each of them shall advance and contribute one moiety of all moneys which may be required for working the same, and of all costs and expenses of protecting and defending the same from infringement or otherwise, but any expenses of obtaining renewals or extensions of the sd letters patent, or obtaining letters patent for any such improvement as aforesd shall be borne by the sd parties in the proportions in which they are to be interested in the same as aforesd.

Advances to be repaid and profits divided.

4. ALL ADVANCES and payments made and to be made by the sd parties respectively in respect of the sd invention and premises (including the preliminary expenses of obtaining the sd letters patent, and testing and perfecting the sd invention), shall be repaid to them with interest at £— per cent. per annum out of the proceeds to be derived from time to time from the sd invention aud premises, (including the royalties and moneys to be received in respect of licenses, or for the sale of the sd patent and premises), and the balance of such proceeds after repayment of the sd advances with interest and the expenses of working the sd patent and premises, shall, during the continuance of the arrangements hereby entered into for working the sd patent, be divided between the sd parties in the proportions in which they are to be interested in the sd patent and premises as aforesd.

Provision in case of patent not being worked.

5. IN CASE it shall be determined not to work the sd invention and premises, or in case the proceeds thereof shall not suffice for the repayment of the sd advances with interest as

aforesd, neither of the sd parties shall have any claim against the other of them in respect of such advances and interest: Provided always that in case either party shall at any time make advances in excess of the proportion in which he is bound to contribute towards the expenses and payments aforesd, he shall be entitled to recover a moiety of such excess from the other of the sd parties with interest at the rate aforesd, and such moiety and interest shall be a charge upon the share and interest of such other party in the sd patent and premises.

Attention to business.

6. THE sd A. shall give as much time and attention as may be necessary for working and developing the sd invention, and shall use his best endeavours to promote the success thereof, but the sd B. shall not be bound to devote more time and attention thereto than he shall think fit.

Neither party to grant licenses, or sell, or incur expenses without consent of other.

7. DURING THE continuance of the arrangement hereby made for working the sd patent and premises, neither of the sd parties shall without the consent of the other of them grant any license for working the sd patent and premises, or sell or dispose of his share or interest in the same, or make any payment, or incur any expenses, debts, or liabilities in respect of the premises, and in case any payment, debt, or liability, shall be so made or incurred without such consent, the same shall be deemed to be made or incurred on the separate and individual account of the party making or incurring the same, and shall be borne by him exclusively, and the other of the sd parties shall be indemnified by him in respect of the same.

Accounts.

8. THE SD patent and premises shall be worked, and the business thereof carried on in the name of the sd A. as patentee, and proper accounts shall be kept by him of all payments made, and moneys received, and liabilities incurred in respect thereof, and of all other transactions relating thereto, and all moneys received in respect of the premises shall be paid into a bank to an account to be kept in the joint names of the sd parties, and shall not be paid out except upon the joint cheque of both parties. The books

PREC. VII.

of account, and other documents relating to the sd patent and premises shall be kept in the custody of the sd A., at his office, or such other place in London as he may think fit, but so that the sd B. may at any time have access to the same. The accounts relating to the sd patent and premises shall be made up and balanced half-yearly on the —— day of —— and —— day of ——, or oftener if the sd parties shall so agree.

Duration of arrangement and power to determine.

9. THE ARRANGEMENT hereby entered into for working the sd patent and premises shall remain in force until the expiration of the term of the sd letters patent, or of any renewal or extension thereof, or any further letters patent to be obtained for any such improvements as aforesd, in case both the sd parties shall so long live, but subject to the right of either party to determine the sd arrangement at the expiration of the first seven years from the date hereof on giving three calendar months previous notice in writing to the other of them, and in the event of the sd arrangement being determined by the death of either party or by notice as aforesd, the sd letters patent, and any extension or renewal thereof, and any such further letters patent as aforesd, and the royalties or other proceeds to be thenceforth derived from any licenses granted previously to such determination shall belong to the sd parties, or their respective exors, admors, or assigns, in the shares aforesd, but each of the sd parties, his exors, admors, or assigns, shall thenceforth be entitled to work and use the sd invention and premises, and to grant licenses (not being exclusive licenses) for working and using the same without being liable to account to the other of such parties, his exors, admors, or assigns, for the profits or royalties to be derived from the same.

Provision where one party desires to abandon.

10. PROVIDED ALWAYS that in case at any time before the sd arrangement for working the sd patent and premises shall have been determined in manner aforesd either of the sd parties shall be of opinion that the same is not likely to prove remunerative, and shall be desirous of abandoning the same, but the other of the sd

parties shall desire to work, or continue the working of the same, the sd first-mentioned party may, by notice in writing to the other party, declare his intention of abandoning the same, and the arrangement hereby made for working the same shall thereupon cease, and the party giving such notice shall not be under any further liability in respect of the expenses of working the sd patent, or otherwise howsoever in respect of the premises (save as hereinafter mentioned), and the sd patent and premises, and the profits and proceeds (if any) thereof, shall thenceforth be the absolute and sole property of the party to whom such notice as aforesd shall be given, and such assignments and acts shall be executed and done as shall be necessary for vesting the same in him accordingly: Provided always, that in case any proceeds shall at any time thereafter be derived from the sd patent and premises, whether by means of the working thereof or of licenses, or the sale thereof, then the party giving such notice shall be entitled to be repaid out of such proceeds the amount of the advances or payments which shall have been made by him for any of the purposes aforesd, and which shall not previously have been repaid, with interest at the rate aforesd, rateably with the amount which shall for the time being have been advanced or paid by the other party for such purposes, and shall not have been repaid, with interest thereon as aforesd, but shall have no personal claim against such other party in respect of such advances or payments, except so far as such proceeds as aforesd shall suffice for the repayment thereof as aforesd. Provided that in case the moneys advanced by either party previously to the sd notice shall exceed the proportion which he shall have been bound to contribute as aforesd, one moiety of such excess, shall, in any event, be repaid to him with interest by the other party. PREC. VII.

11. THE MENTION in this agreement of either of the sd parties hereto by name, or otherwise, shall be deemed to include his exors, admors, and assigns, unless otherwise inconsistent with the terms and provisions hereof. Interpretation.

PREC. VII.

Arrangement not to constitute partnership.

12. AND LASTLY, it is hereby expressly agreed that the arrangement hereinbefore contained shall not constitute a partnership between the sd A. and B., but that the same shall be considered to be an arrangement within the first section of the Act of Parliament of the 28th and 29th years of Her present Majesty, chapter 86.

AS WITNESS, &c.

RELEASES (*a*).

I.

RELEASE *by* DEED POLL *on Payment of a* LEGACY *to a* MARRIED WOMAN *charged on* REAL ESTATE. PREC. I.

TO ALL TO WHOM THESE PRESENTS SHALL COME, A. of, &c., and B. his wife, send greeting. *Recite will of X., bequeathing legacy to B., and charging it in aid of his personal estate on certain real estate devised to C. for life, remainder to D. in fee. Death of testator and probate, p.* 243; *death of C.* AND WHAS the sd legacy of £—— bequeathed to the sd B. by the sd will, and all interest thereon, has been paid to the sd A. with the consent of the said B., out of the personal estate of the sd testator, as the sd A. and B. do hereby acknowledge. NOW THESE PRESENTS WITNESS that, in consideration of the premises, the sd A. and B. do, and each of them doth, hereby release and discharge all the sd messuages, lands, tenements, and hereditaments, situate at, &c., and all other (if any) the hereditaments charged with the payment of the sd legacy, and also the sd D., his heirs, exors, admors, and assigns, and all other persons and property whom it doth or may concern, from the sd legacy or sum of £——, and the interest thereof, and every part thereof respectively, and all claims and demands in respect thereof.

Recitals.

Witnesseth.

IN WITNESS, &c.(*b*)

(*a*) See 5 Davidson, Prec., Part 2, 139, 3rd edit. Elphinstone, Introd. Conv., 404.

(*b*) To be acknowledged by B. under the Fines and Recoveries Act, 3 & 4 Will. 4, c. 74.

II.

PREC. II.

RELEASE *of* PART *of* SETTLED ESTATES *from a* CHARGE *of* PORTIONS, *and a* TERM *for securing them, and from a* MORTGAGE *by demise of the term, to* ENABLE *a* SALE *to be effected.*

Parties, B., C., and D., *portionists*, 1; L. and M., *trustees of portions term*, 2; P. and Q., *mortgagees*, 3; A., *tenant for life*, 4.

Recitals.

Recite will of X., devising his real estates in strict settlement, with a power to tenants for life to charge portions, setting out the limitations as far as the estate for life of the person who exercised the power. Death and probate, p. 243. AND WHAS on the death of the sd X. the sd K. became entitled as tenant for life to the possession of the —— and hereditaments devised by the sd will. *Recite appointment of portions to K.'s younger children, and creation of term vested in L. and M. to secure the same. State of K.'s family, shewing that A. is his eldest son, and that B., C., and D., became entitled to portions. Disentailing deed by K. and A. Mortgage by demise by trustees of term to P. and Q. to secure £——, part of the portions. Resettlement subject to the portions and mortgage reducing A.'s estate to a life estate. Death of K. State of mortgage debt*, p. 694.

Contract for sale.

AND WHAS in pursuance of a power contained in the sd indre of, &c., *the resettlement*, the sd R. and S. have, at the request of the sd A., entered into a contract for the sale of the hereditaments hereinafter expressed to be hereby released:

Agreement to release portions and mort-

AND WHAS, in order to enable the sd R. and S. to carry the sd sale into effect, the sd A. has requested the sd B., C., and D., and the sd P. and Q., to release the same hereditaments from the sd sum of £—— so charged for portions as aforesd, and the interest thereon, and from the sum of £—— so due as aforesd for principal and interest on the sd mortgage, which they have respectively agreed to do, being satisfied that the

residue of the hereditaments on which the sd portions and mortgage debt are respectively charged are a sufficient security for the same, and the interest thereon respectively: AND WHAS the sd L. and M. have agreed, at the request of the sd A., and by the direction of the sd B., C., and D., and the sd P. and Q. have agreed, at the request of the sd A., to make such surrenders of the hereditaments so agreed to be sold as aforesd as are hereinafter contained: NOW THIS INDRE WITNESSETH that in pursuance of the sd agreement, and in consideration of the premises, they the sd B., C., and D., at the request of the sd A., do, and each of them doth, hereby release ALL AND SINGULAR the —— and hereditaments specified in the schedule hereto from the sd sum so charged for the portions of the younger children of the sd K. as aforesd, and from all interest for the same; And from all actions, proceedings, claims, and demands, in respect thereof, or of any part thereof respectively, or for or in respect of anything in anywise relating to the premises. *Further Testatum*, They the sd L. and M., at the request of the sd A., and by the direction of the sd B., C., and D., do, and each of them doth, hereby surrender unto the sd A. and his assigns, ALL AND SINGULAR the sd —— and hereditaments, specified in the sd schedule hereto, with the rights, easements, and appurtenances thereof, *estate clause*, p. 264: To the intent that the sd term of —— years may merge and be absolutely extinguished in the freehold and inheritance of the sd premises. *Further testatum*, They the sd P. and Q. do, and each of them doth, hereby surrender and release unto the sd A. and his assigns, ALL AND SINGULAR the sd —— and hereditaments, &c., *as above*, freed and discharged from all principal moneys and interest due and owing to the sd P. and Q. on the security of and from all claims and demands under the hereinbefore recited indre of mortgage of, &c., to the intent that the sd term of —— years thereby created may merge, &c., *as above:* PROVIDED ALWAYS that nothing herein contained shall prejudice or affect the security of the

Mortgagees and trustees to join.

Release of portions.

Surrender of portions term.

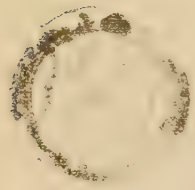
Release of mortgage.

PREC. II. sd P. and Q. under the sd indre of mortgage as regards the other hereditaments therein comprised.

IN WITNESS, &c.

The Schedule above referred to.

Schedule.



III.

PREC. III. RELEASE *of* VARIOUS INCUMBRANCES *on* SETTLED ESTATES *contracted to be sold, the* INCUMBRANCES NOT *being* PAID OFF, *but* OTHER SECURITY *having been* SUBSTITUTED.

Recitals. Parties, *Incumbrancers of first, second, and third parts, A. and B., trustees of settlement, of fourth part. Recite incumbrances, and settlement subject thereto containing a power of sale:* AND WHAS a sum of money is still due to each of the sd respective mortgagees on their sd respective securities: AND WHAS the sd A. and B. have entered into a contract for the sale of the —— and hereditaments hereinafter expressed to be hereby released to X. of, &c., and in order that they may be enabled to carry out and complete the sd sale, they have applied to the sd respective mortgagees to release the sd premises so contracted to be sold as aforesd from their sd several mortgage securities, according to the estates and interests of the sd mortgagees respectively therein, which the sd mortgagees have agreed to do upon having other sufficient security given to them respectively for their sd mortgage debts, which securities have been already effected, as they, the sd mortgagees, do hereby respectively acknowledge:

Release. NOW THIS INDRE WITNESSETH that, in pursuance of the sd agreement, and in consideration of the premises, they, the sd parties hereto of the first, second and third parts, according to their several estates and interests in the

hereditaments hereinafter described and expressed to be hereby released under the sd respective indres of mortgage, do respectively hereby grant and release unto the sd A. and B., *Parcels, General words, Estate clause,* TO HAVE AND TO HOLD the sd —— and premises hereby granted and released UNTO the sd A. and B., and their heirs, freed and discharged from all and every the principal moneys and interest due and owing under the sd several mortgage securities, and all claims and demands under or on account of the sd securities respectively: To the uses, upon the trusts, and with and subject to the powers and provisions in and by the hereinbefore recited indre of settlement limited, declared, and contained concerning the same premises, or such of the same uses, trusts, powers, and provisions as are now subsisting and capable of taking effect. *Covenant by mortgagees with A. and B. against incumbrances,* p. 740, *mutatis mutandis.* PREC. III. Habendum.

IN WITNESS, &c.

IV.

RELEASE *of* QUIT RENTS, *&c., and* MANORIAL RIGHTS *affecting* FREEHOLDS. PREC. IV.

Parties, A., *lord of manor,* 1; B. and C., *trustees of freeholds held of manor,* 2. *Recite conveyance of manor to A.:* AND WHAS the sd B. and C. hold the lands hereinafter described to them and their heirs freely of the sd manor of —— by the several yearly quit-rents, reliefs, and heriot, hereinafter mentioned and other services: AND WHAS the sd A. has agreed with the sd B. and C. for the release, by way of enfranchisement, of the sd quit-rents, reliefs, heriot, and services, for the sum of £——: NOW THIS INDRE WITNESSETH that in pursuance of such agreement, and in consideration of the sum of £—— paid by the sd B. and C. to the sd A., Recitals. Testatum.

PREC. IV. (the receipt, &c.), the sd A. doth hereby grant and release unto the sd B. and C., their heirs and assigns, ALL THOSE several yearly quit-rents of £——, and £——, per annum, and all those reliefs of £—— and £—— payable on death, and all that heriot of the best beast payable, or to be rendered in respect of, and all manorial and seignorial services affecting ALL THOSE pieces of land, &c., *Parcels*: TO HAVE AND TO HOLD the sd quit rents, reliefs, and heriot, manorial and seignorial services and premises UNTO and to the USE of the sd B. and C., their heirs and assigns, to the intent that the same may be merged in the sd lands and hereditaments, and be no longer paid or rendered. *Covenants by A. that he has power to grant, for quiet enjoyment, free from incumbrances, and for further assurance*, p. 268; *and to produce the recited indre*, p. 288.

IN WITNESS, &c.

V.

PREC. V. RELEASE *of a perpetual* RENT-CHARGE *on its* PURCHASE *by the* OWNER *of the* ESTATE, *so as to be kept on foot.* (*a*)

Parties, A., *owner of rent-charge*, 1; B., *owner of estate*, 2;
Recitals. C. *trustee*, 3. *Recite creation of, and devolution of title to rent-charge, and B.'s title to estate:* AND WHAS the sd B. has paid to the sd A. the sd annuity, and all arrears thereof to the day of the date hereof, as the sd A. doth hereby acknowledge: AND WHAS the sd B. has agreed with the sd A. for the purchase of the sd annuity of £—— for the sum of £——, and the sd B. has requested that the same may be granted to the sd C., in trust for him the sd B., in
Grant. manner hereinafter expressed: NOW THIS INDRE WITNESSETH that in pursuance, &c., *Consideration, Receipt,*

(*a*) There being other outstanding rent-charges or incumbrances payable pari passu, or subsequently created by a previous owner. Compare the Precedents at pp. 304 and 321.

He, the sd A., at the request of the sd B. doth hereby grant unto the sd C., his heirs and assigns, ALL THAT the sd perpetual annuity or yearly rentcharge of £—— so given and devised to him, the sd A., his heirs and assigns, in and by the sd recited will of the sd —— deceased, [*or*, created by the sd indre of, &c.], as aforesd, and all future claim and demand of him, the sd A., and his heirs, in, to, or concerning the sd annuity and premises, together with all powers and remedies for enforcing and recovering the payment thereof: TO HAVE AND TO HOLD the sd premises UNTO and to the USE of the sd C., his heirs and assigns, upon trust for the sd B., his heirs and assigns, and to be granted and disposed of from time to time as he or they shall direct and appoint, To the intent that the sd annuity, and the fee simple and inheritance thereof, may be kept distinct from the sd messuages and lands charged with the payment thereof, and the fee simple and inheritance thereof, and not be merged or extinguished therein. *Covenants by A. with C. for title to rent-charge*, p. 268; *in the covenant for quiet enjoyment, say*, "and be quietly received."

PREC. V.

Parcels.

Habendum.

IN WITNESS, &c.

VI.

RELEASE *to* TRUSTEES *of* MARRIAGE SETTLEMENT (*comprising* PERSONAL ESTATE *in Possession and Reversion, and a* POLICY *on the Husband's Life*) *on* DISTRIBUTION *of the Trust Funds, with the* EXCEPTION *of* SHARES *belonging to* INFANTS. THE DEALINGS *with the Trust Funds and other transactions being* RECITED IN DETAIL, *and an* INDEMNITY *being given to the* TRUSTEES *in respect of certain* BREACHES *of* TRUST.

PREC. VI.

Parties, A., *husband and representative of deceased daughter*, 1; B., *eldest son and also executor of last tenant for life*,

PREC. VI.

Recital of settlement.

2; C. and D. his wife, *a married daughter*, 3; E. and F., *trustees of daughter's settlement*, 4; G., *a son*, 5; H. and I., *trustees of settlement*, 6: WHAS by an indre, dated, &c., and expressed, &c. (being the settlement executed previously to and in consideration of a marriage which was shortly afterwards solemnized between the sd K. and L.), certain parts or shares of and in the trust funds and property therein mentioned, to which the sd L. was entitled in manner therein appearing, in reversion expectant on the decease of M. and N., her father and mother, were assigned by her, with the approbation of the sd K. to O. and P., upon the trusts thereinafter declared concerning the same, And by the same indre it was declared that after the solemnization of the sd then intended marriage, the sd O. and P., and the survivor of them, and the exors and admors of such survivor, should stand possessed of the sd parts or shares thereby assigned when the same should fall into possession and be received, and also of the sum of £—— then secured at interest by an indre of mortgage therein referred to (which sum, together with the security for the same, had been assigned and transferred to the sd O. and P. by an indre bearing even date with the indre now in recital), and of the sum of £—— Bank Annuities, which had also been transferred into their names, and of the moneys, stocks, funds, and securities, representing the same respective premises, upon trust either to permit the same to remain in their actual state of investment respectively, or at any time or times, with the consent of the sd K. and L., or the survivor of them, and after the death of such survivor at the discretion of the trustees or trustee for the time being, to sell, call in, and convert into money such respective trust premises, or any part or parts thereof respectively, and to invest the proceeds, *set out remainder of the trusts for investment and varying investments*, and it was thereby declared that the sd trustees or trustee should, &c., *recite trusts of the income for K. and L. during their lives, and of the capital after their decease for their issue as they appoint, and in default for sons at twenty-one and*

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daughters at twenty-one or marriage, and the hotchpot clause, and the sd indre now in recital contained the usual powers of advancement and maintenance of the children of the sd then intended marriage, and the usual trusts for the accumulation of the surplus income of the expectant share of each child during his or her minority, and also a provision for the settlement of any other property to which the sd L. was or might during the sd intended coverture become entitled of the value of £—— or upwards (except as therein mentioned), and by the same indre the sd K. assigned a policy of assurance on his life for the sum of £——, effected in the —— Office, and the moneys assured by or to become payable under the same unto the sd O. and P., their exors, admors, and assigns, to be held after the sd then intended marriage upon trusts corresponding with the trusts thereinbefore declared concerning the sd trust premises thereinbefore settled, save as regards the ultimate trust thereof in the event of such default or failure of children of the sd marriage as therein mentioned, and the sd indre now in recital contains a provision for the appointment of new trustees thereof in the place of any trustee or trustees dying or desiring to be discharged and otherwise as therein expressed: AND WHAS there were six children only of the sd marriage of the sd K. and L., namely, Q. and R., both of whom died under the age of twenty-one years, and without having been married, a daughter, S., who intermarried with the sd A. in the year ——, and died in the year ——, leaving issue two children, namely, T. and U., both of whom are living but are infants under the age of twenty-one years, a son, the sd B., who has attained the age of twenty-one years, a daughter, the sd D., who intermarried with the sd C., in the year ——, and a son, the sd G., who has attained the age of twenty-one years: AND WHAS the sd M., the father of the sd L., died in the year ——, and the sd N., the mother of the sd L., died in the year ——: AND WHAS shortly after the death of the sd N. the sum of £—— was received by the sd O. and P. as the net amount or value (after deduction and

Recitals as to state of family.

Receipt and investment of reversion.

PREC. VI.

allowance of succession duty and expenses) of the parts or shares of and in the trust funds and property aforesd, which were assigned to them by the sd L. by the hereinbefore recited indre of settlement, and thereout the sum of £—— was paid by the sd O. and P. for costs which they had incurred in relation to the sd trust premises, and the residue thereof, amounting to £——, was invested by them in the purchase of £—— £— per cent. India Stock: AND WHAS by an indre, dated, &c., and expressed, &c., the sd H. was, under the power for that purpose contained in the sd indre of settlement as aforesd, appointed a trustee thereof in the place of the sd O., who retired from the sd trust, and by the same indre and a certain other indre bearing even date therewith (being a transfer of the sd mortgage), or by other appropriate means, the trust property then subject to the trusts of the sd settlement was thereupon duly transferred so as to be vested in the sd P. jointly with the sd H.: AND WHAS in the year —— the sd principal sum of £—— which was then invested on mortgage as aforesd, was repaid to the sd P. and H., and was invested by them at the request of the sd K. and L., in the purchase of —— shares of £—— each in the —— Railway Company: AND WHAS it is apprehended that such last-mentioned investment was not authorised by the trusts of the sd indre of settlement: AND WHAS in the year —— the sd P. and H., with the consent in writing of the sd K. and L., sold two of such railway shares, and applied the net proceeds thereof, amounting to £——, for the advancement of the sd G., under the power for that purpose contained in the sd indre of settlement: AND WHAS the sd P. died in the year ——, and by an indre, dated, &c., the sd I. was, in exercise of the sd power contained in the sd indre of settlement, duly appointed a trustee of such indre in his place, and by the same indre the sd policy of assurance and the moneys assured thereby were assigned to the sd H. and I. upon the trusts aforesd: AND WHAS the costs of and incidental to such appointment and other expenses incurred by the sd trustees, amounting to £——, were raised by the sale

Appointment of new trustee.

Repayment and investment of mortgage moneys.

Breach of trust.

Advancement of child.

Appointment of new trustee.

Payment of costs and transfer of trust funds.

of £——, part of the sd sum of £—— Bank Annuities, and the sum of £——, the residue of such Bank Annuities, and the sd sum of £—— India Stock, and the sd remaining shares of the sd railway company were duly transferred to the sd H. and I.: AND WHAS in the year —— the sd H. and I., at the request of the sd K. and L., sold out eight of the sd railway shares, realising £——, and applied the same in payment of certain debts which had been incurred by the sd B., who was then an infant: AND WHAS it is apprehended that such last-mentioned application was a breach of trust, but the sd B. has agreed to treat such sum of £—— as part of the sum of £—— hereinafter recited to have been appointed to him and to give to the sd H. and I. such release in respect thereof as is hereinafter contained: AND WHAS the sd K. died in the year —— without having joined with the sd L. in making any appointment under the power of joint appointment among the issue of their sd marriage, given to them by the sd indre of settlement: AND WHAS shortly after the decease of the sd K., the sd trustees received the sum of £—— in respect of the sum assured by the sd policy on his life and additions thereto, and invested the same after paying thereout the sum of £—— for costs in the purchase of the sum of £—— £— per cent. India Stock, making with the sd sum of £—— the sum of £——, like Stock: AND WHAS by a deed-poll, dated, &c., the sd L. appointed that in case the then intended marriage between the sd C. and D. should take place within six calendar months from the date of the deed now in recital, the sum of £——, part of the property subject to the trusts of the sd indre of settlement should be held in trust for and absolutely vested in the sd D., her exors, admors, and assigns, subject to the life-interest of the sd L. therein: AND WHAS by an indre, dated, &c., and expressed, &c., (being the settlement made in consideration of the marriage which was shortly afterwards solemnised between the sd C. and D.), the sd D., with the consent of the sd C., assigned unto the sd E. and F., their exors, admors, and assigns, the sd sum of £——, to which

Sale of part of trust funds, and application in breach of trust.

Death of tenant for life.

Receipt and investment of policy moneys.

Appointment in favour of a daughter.

Marriage settlement of daughter.

PREC. VI.

the sd D. was entitled by virtue of such appointment as last aforesd, to hold the same upon certain trusts therein declared concerning the same, and it was thereby expressly declared that the sd investment of the sum of £—— in the purchase of the sd railway shares was to be considered, so far as regarded the persons claiming under the indre now in recital, a proper investment of the trust funds of the hereinbefore recited indre of settlement, *recite receipt clause, if any, in D.'s settlement; Appointment by L. of £—— to B.*, and by the same indre the sd L., released her life-interest in the income of such sum of £—— to the sd B. to the intent that the same might be vested in him in possession, and be immediately raiseable: AND WHAS shortly after the date of the lastly hereinbefore recited indre, the sd H. and I. raised the sum of £—— by the sale of the sd sum of £—— Bank Annuities, and of the sum of £—— India Stock, part of the sd sum £—— like Stock, and after payment thereout of the sum of £—— in discharge of the succession duty which would become payable in respect thereof on the death of the sd L. less discount, they paid the sum of £——, being the residue thereof to the sd B., making, with the sum of £—— hereinbefore recited to have been paid on account of the sd B., the sum of £—— so appointed to him as aforesd; *Appointment by L. of £—— to T. and U. subject to her own life interest; Will of L. appointing B. exor*: AND WHAS the sd L. died on, &c., without having made any further appointment of any part of the sd trust-funds under the power vested in her by the sd indre of settlement as aforesd; *Probate*: AND WHAS all the income which accrued from the sd trust-funds, or such of them as had, for the time being, fallen into possession, up to the death of the sd K. was duly paid to him, and all the income which subsequently accrued from the sd trust funds, except such parts thereof as had been applied or disposed of as aforesd, was duly paid to the sd L. during her life, as the sd B., as exor of the sd L., doth hereby acknowledge: AND WHAS the sd H. and I. have received £—— in respect of income of the sd trust premises since

Appointment of sum and release of life interest to son.

Payment thereof.

Death of tenant for life.

Application of income.

the death of the sd L., and have paid £——, being the apportioned part thereof which accrued during the life of the sd L. to the sd B., as her exor, as he doth hereby acknowledge, and have applied £——, the residue thereof, in payment of costs incurred in relation to the sd trust: AND WHAS the sd H. and I. lately sold the sum of £—— part of the sum of £—— India Stock, then remaining in their names as aforesd, and have thereout paid the remainder of the succession duties amounting to £—— which became payable on the death of the sd L. in respect of the sd trust premises, and have retained the sum of £——, being the residue of the proceeds of such sale in satisfaction of the remaining costs and expenses incurred by them in relation to the sd trust and these presents: AND WHAS no property, real or personal, has at any time been settled under the provisions contained in the hereinbefore recited indre for the settlement of other or after-acquired property of the sd L. and no property, real or personal, save as hereinbefore appears, has at any time become subject to the trusts of the sd indre, or come to the hands of the sd H. and I. as trustees thereof: AND WHAS the accounts of the sd trustees, showing all the particulars of their receipts and disbursements in relation to the sd trust estate and premises, and the dealings therewith, from the date of the sd indre of settlement to the present time, have been submitted to all the sd parties hereto of the first five parts, and been carefully examined by them, and have been signed by such respective parties in testimony of their approval thereof: AND WHAS the sd H. and I. have retained the sum of £—— India Stock, which, at the price of the day, is of the value of £—— to answer the sum so appointed to the sd T. and U. (*the infants*) as aforesd, and have transferred the residue of the sd stock and —— shares of the sd Railway Company (being together at the respective market prices of the day of the value of £ ——) to the sd E. and F., with the approbation of the sd C. and D., in satisfaction of the sum appointed to the sd D. as aforesd, as they, the sd C., D., E.,

Payment of succession duty and costs.

No after-acquired property.

Accounts.

Retention of infants' shares and payment of daughter's share.

PREC. VI.

Transfer of remaining funds to son.

and F., do respectively hereby acknowledge: AND WHAS the sd remaining —— shares of the sd Railway Company, which, at the market price of the day, are of the value of £——, and which represent the portion remaining unappointed of the sd trust premises, belong wholly to the sd G., the sd parties hereto of the first four parts being excluded by the effect of the hotchpot clause contained in the sd indre of settlement from taking any share therein, and such last-mentioned railway shares have accordingly been transferred by the sd H. and I. to the sd G., as he doth hereby acknowledge: AND WHAS the sd several parties hereto of the first five parts are satisfied with the application, disposition, division, and distribution of the sd trust estate and premises hereinbefore recited to have been made, and that such division and distribution is in full satisfaction of their respective shares and interests therein under the sd indre of settlement [save as regards any further share or shares which may hereafter accrue to them respectively as hereinafter mentioned]: AND WHAS before the several payments and transfers lastly hereinbefore recited were made, it was stipulated and agreed that the release and indemnity hereinafter contained should be made and given: NOW THIS INDRE WITNESSETH that in pursuance of the sd agreement, and in consideration of the several payments and transfers so made as aforesd, and of the premises, the sd A., B., C., D., E., F., and G. (*a*) [*or*, the sd respective parties hereto of the first five parts] (the sd B. concurring herein as well in respect of his own beneficial interest in the premises as in his character of exor of the sd L.), do and each and every of them doth hereby absolutely release, and for ever discharge the sd H. and I., and each of them, their, and each of their, heirs, exors, and admors [and also the sd O., his heirs, exors, and admors, estate and effects, and the estate

That parties are satisfied with distribution.

Agreement for release.

Witnesseth.

Release.

(*a*) The trustees of the sub-settlement might, in the absence of express authority in their settlement to give a release, object to do so: in that case they will concur in the deed merely for the purpose of acknowledging the receipt of the share paid to them.

and effects of the sd P. deceased (*d*)] from the moneys, stocks, funds, shares, and securities so paid or transferred by the sd H. and I., or the sd trustees for the time being of the sd indre of settlement to the sd B., E., F., and G., as hereinbefore mentioned, and all other the trust estate, property, and premises comprised in or subject to the trusts of the sd indre of settlement, and the interest, dividends, and income thereof, and every part thereof respectively, and from all actions, proceedings, claims, and demands, in relation thereto, or otherwise under the trusts of the sd indre of settlement [or any trust funds or property which have been at any time subject to the trusts thereof, or any sale, investment, payment, allowance, act, or thing, whatsoever at any time made, done, executed, or omitted, by the sd H. and I., or the trustees or trustee for the time being of the sd settlement, or either or any of them, in or about the execution of the trusts thereof, whether hereinbefore specifically mentioned or referred to or not], or for or in respect of anything relating to the premises: AND THIS INDRE ALSO WITNESSETH that in pursuance of the sd agreement, and in consideration of the premises, the sd A., B., C., and G., do hereby, for themselves, their heirs, exors, and admors, jointly, and each of them doth hereby for himself his heirs, exors, and admors, severally covenant with the sd H. and I., their, and each of their, exors and admors, that they, the sd covenanting parties, and every of them, their and every of their, heirs, exors, and admors, will from time to time, and at all times hereafter, indemnify and keep indemnified the sd H. and I., and each of them, their, and each of their, heirs, exors, and admors, and also the sd O., his heirs, exors, and admors, estate and effects, and the estate and effects of the sd P., deceased, from all actions, proceedings, claims, and demands on the part of any person or persons whomsoever, and all costs, damages, and expenses whatsoever by reason of the investment of the sd sum of

Covenant of indemnity in respect of breaches of trust.

(*d*) Words releasing retired, and the estates of deceased, trustees are frequently inserted, and there appears to be no practical objection to so doing.

PREC. VI.

Proviso when further shares may accrue to the releasing parties.

£—— in the purchase of the sd railway shares, or the subsequent retention of the sd investment, or any part thereof (*e*). *If the appointment to T. and U.* (*the infants*) *was not absolute, so that a further share may accrue to the releasing parties, add,* Provided always, and it is hereby

(*e*) Where one of the shares under a settlement or will has been settled by an instrument not condoning a breach of trust previously committed, a covenant of indemnity by some of the persons *sui juris* interested under the sub-settlement should be inserted, as follows: "AND THIS INDRE FURTHER WITNESSETH that, in pursuance of the sd agreement in this behalf, and in consideration of the premises, *joint and several covenants by covenantors, with trustees,* that they the sd covenanting parties, and every of them, their, and every of their, heirs, exors, and admors, will at all times hereafter indemnify, and keep indemnified, the sd, *trustees,* and each of them, their, and each of their, heirs, exors, and admors, and also the estate and effects of the sd —— deceased, from all actions, proceedings, claims, and demands, whatsoever, on the part of any person or persons claiming under the sd indre of settlement of, &c., *the sub-settlement,* by reason, or in respect of [the sd investment in railway shares, or the retention of such investment, *or as the case may be*], and from all costs, damages, and expenses, occasioned by any such action, proceeding, claim, or demand." A general covenant of indemnity by the beneficiaries (each as to his own share) is sometimes added, in the following form, but this is of little, if any, value, unless it be as a protection to the trustees against the possibility that incumbrances may have been created on some of the shares, of which notice may have been given, but that, owing to a change of trustees or solicitors, or otherwise, such notice has not reached the present trustees: "AND THIS INDRE ALSO WITNESSETH that, in pursuance of the sd agreement, and in consideration of the premises, each of them, the sd, *covenantors,* as far as relates to the share to which he [or she] is, or claims to be, entitled in his [or her] own right [or in right of his wife] in the sd trust premises, doth hereby for himself [or herself], his [or her] heirs, exors, and admors, covenant with the sd, *trustees,* and each of them, their, and each of their, heirs, exors, and admors, that they,

agreed and declared that the release hereinbefore contained shall not extend to any share or shares of the sd trust property which may hereafter accrue to any of the sd parties hereto of the first five parts, or their respective exors, admors, or assigns, by reason of the sd T. and U., or either of them dying without attaining a vested interest under the sd deed of appointment of, &c. PREC. VI.

In witness, &c.

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the sd covenanting parties, and every of them, their and every of their, heirs, exors, and admors, will, from time to time, and at all times hereafter, indemnify, and keep indemnified, the sd, *trustees*, and each of them, their, and each of their, heirs, exors, and admors, and also the estate and effects of the sd ——, deceased, from all actions, proceedings, claims, and demands, in respect of the moneys, stocks, funds, shares, and securities, so paid, or transferred by the sd trustees, as hereinbefore recited, or other the trust estate property and premises comprised in, or at any time subject to, the trusts of the sd indre of settlement of, &c., or the interest, dividends, or income thereof, or any part thereof respectively, or otherwise, under the trusts of the sd indre of settlement [or any sale, investment, payment, allowance, act, or thing whatsoever, at any time made, done, executed, or omitted by the sd trustees or trustee for the time being of the sd settlement, or either or any of them, in or about the execution of the trusts thereof, whether hereinbefore specifically mentioned, or referred to, or not], and from all costs, damages, and expenses, to be occasioned by any such action, proceeding, claim, or demand, as aforesd, or otherwise in respect of the premises."

VII.

PREC. VII.

RELEASE *and general* COVENANT *of* INDEMNITY *to* TRUSTEES *of settlement comprising* PERSONALTY *and* REAL ESTATE *conveyed in* TRUST *for* SALE.

Recital of settlement.

Parties, A., *son*, 1; B. and C., his wife, *daughter*, 2; D. and E., *surviving trustees*, 3. *Recital of conveyance of real estate in trust for sale and settlement of even date on marriage of F. and G. settling* £—— *Stock, and proceeds of sale of real estate on wife and husband successively for life, with remainder as wife should appoint, with remainder for children equally at twenty-one, &c., and power of advancement, and containing covenant by L., wife's father, to pay gross sum on his death, with interest in meantime to be held on similar trusts:*

Death of tenants for life.

AND WHAS the sd G. died on the —— day of —— without having exercised the sd power of appointment by the sd indre of settlement given to her as aforesd; *death of F., having made a will appointing A. executor; probate:*

Family.

AND WHAS there have been issue of the sd marriage between the sd F. and G., three children, and no more, namely, the sd A., who has attained the age of twenty-one years; the sd C., who intermarried with the sd B. on the —— day of ——, and has since attained the age of twenty-one years; and H., who attained the age of twenty-one years on the —— day of ——:

Death of wife's father, and payment and investment of sum secured by his covenant.

AND WHAS the sd L. died, &c., in the lifetime of the sd G., and the sd sum of £—— by the hereinbefore recited indre covenanted to be paid by him, the sd L., was on the —— day of —— paid to the sd trustees, and invested by them on the —— day of ——, in the purchase of —— debentures of £—— each of the —— Railway Company:

Advancement of a child.

AND WHAS the interest payable during the life of the sd L., on the sd principal sum of £——, and all the interest payable thereon after his decease, was duly paid by him or his exor, and was received by the sd G.: AND WHAS in the year —— the sum of £——, part of the sd sum of £—— Bank Annuities comprised in the sd indre

of settlement, was, with the consent in writing of the sd F. sold by the sd trustees, and the proceeds thereof applied for the advancement of the sd A.; *Death of H., having made a will bequeathing her residuary estate,* "which included her share and interest under the sd settlement," *to A. and C. equally, and appointing A. exor; Death and probate; Deaths of I. and K., two of the trustees, and appointment of D. and E., trustees in their place of the settlement and deed of even date, and transfer of trust estate; Death of M., the remaining original trustee:* AND WHAS the whole of the hereditaments by the sd indre of even date with the sd settlement conveyed in trust for sale as aforesd, have been retained unsold: AND WHAS the sd £—— Annuities were in the year —— converted by Act of Parliament into £—— —— per cent. Annuities: AND WHAS under the trusts of the sd indre of settlement (as hereinbefore appears) upon the decease of the sd F., the sd A. became entitled in possession to one equal third part of the sd trust property (subject to bringing into account the sum of £—— applied for his advancement as aforesd, and subject to the payment of succession duty), and the sd C., or the sd B. in her right, became entitled in possession to another equal third part thereof (subject to succession duty): AND WHAS the funeral and testamentary expenses and debts of the sd H. have been fully paid and satisfied, and by virtue of the bequests contained in her sd will, the sd A., and the sd C., or the sd B. in her right, are beneficially entitled in equal shares to the one-third share of the sd H. in the sd trust property (subject to succession duty, and subject also to the payment of the legacy duty payable under the will of the sd H.): AND WHAS all the dividends and rents of the sd trust property up to the sd death of the sd G., inclusive of the apportioned part of the dividends and rents which became due after her decease, were duly paid to her or to the sd F., as her administrator, and all dividends and rents thereof subsequently to such death, and up to the death of the sd F., inclusive of the apportioned part of the dividends and rents due after his death, were duly paid to

Real estate not sold.

Conversion of stock by Act of Parliament.

Shares in which estate divisible.

As to share of deceased child.

Income.

PREC. VII.

him or the sd A., as his exor, as the sd A. doth hereby acknowledge: AND WHAS the sum of £—— part of the sd sum of £—— Bank Annuities, has been sold by the sd D. and E., and the proceeds thereof, together with the dividends and rents amounting to £——, which have accrued on the sd trust property since the death of the sd F., have been applied in payment of the succession duty payable in respect of the sd trust property and the costs of and incidental to the preparation and execution of these presents or otherwise relating to the winding up of the sd trust: AND WHAS all legacy duty payable under the will of the sd H. has been duly paid: AND WHAS the sd hereditaments situate at —— have been valued by —— at the sum of £——, which sum it has been agreed shall be taken as the value thereof for the purpose of the division of the sd trust property: AND WHAS the market value of the sum of £—— Bank Annuities (being the sum remaining after such sale as aforesd), and of the sd £—— Railway Debentures at the price of the day is £—— and £—— respectively: AND WHAS it has been agreed that the sd hereditaments and the sum of £—— Bank Annuities, which together amount in value to the sum of £—— (being the amount of the total share of the sd A. in the sd trust property after accounting for the sum of £—— applied for his advancement as aforesd,) shall be appropriated to him, and that the sum of £—— Bank Annuities and the sd sum of £—— Railway Debentures, amounting together in value to the sum of £—— (being the amount of the total share of the sd C. in the sd trust premises), shall be appropriated to her: AND WHAS by an indre bearing even date herewith, and expressed, &c., the sd hereditaments have been conveyed by the sd D. and E. to the sd A.: AND WHAS the sd sum of £—— Bank Annuities has been transferred by the sd D. and E. to the sd A., and the sd sum of £—— Bank Annuities and £—— Railway Debentures have been transferred by the sd D. and E. to the sd B., with the consent of the sd C., as they the sd A., B., and C., do hereby acknowledge: AND WHAS before the conveyance and transfers aforesd were made, it was agreed

Payment of duties and costs.

Valuation of trust property.

Agreement for division of estate

Conveyance of real estate to son.

Transfer of stocks.

Agreement for release.

PREC. VII.

that the release and indemnity hereinafter contained should be given and executed: NOW THIS INDRE WITNESSETH that in pursuance of the sd agreement and in consideration of the premises the sd A. (as well in respect of his beneficial interest as in his character of exor of the sd H. and F. respectively) and the sd B. and C. do and each of them doth hereby release and discharge the sd D. and E., and each of them, their, and each of their, heirs, exors, and admors, and also the estates and effects of the sd I., K., and M. respectively, from the sd respective sums of £—— and £—— Bank Annuities, and £—— Railway Debentures so transferred to the sd A. and B. respectively as aforesd, and from the sd hereditaments and the proceeds of the sale thereof, and from all actions, proceedings, claims, and demands whatsoever, for or in respect of the same respectively, or the trust property comprised in or at any time subject to the trusts of the sd indre of settlement or the sd indre of even date therewith, or the dividends, interest, rents, or annual produce thereof, or anything in anywise relating to the trusts of the sd settlement or the sd indre of even date therewith, or the premises (*a*): AND THIS INDRE FURTHER WITNESSETH that in pursuance of the sd agreement and in consideration of the premises the sd A. and B. do hereby for themselves, their heirs, exors, and admors, and each of them doth hereby for himself, his heirs, exors, and admors, covenant with the sd D. and E., their exors and admors, and with each of them, his exors and admors, that they the sd covenanting parties respectively will at all times hereafter effectually indemnify and keep indemnified the sd D. and E., and each of them, their and each of their, heirs, exors, and admors, against all actions, proceedings, claims, and demands on the part of any person or persons whomsoever, and from all costs, damages, and expenses in respect of the trust estate and property now or at any time comprised in or subject

Release.

Covenant of indemnity. (*b*)

(*a*) For a fuller form of release, see the last precedent.

(*b*) As to the insertion of a general covenant of indemnity, see above, p. 1012, note (*e*).

PREC. VII. to the trusts of the sd indre of settlement, or the dividends, interest, rents, or annual produce thereof, or any part thereof respectively, or anything done or omitted by the sd D. and E., or the sd I., K., and M., or any of them, in the execution of the trusts of the sd indre, or anything in anywise relating to the premises.

IN WITNESS, &c. (*c*)

VIII.

PREC. VIII. RELEASE *to the* TRUSTEES *of a* MARRIAGE SETTLEMENT *on the* FINAL DISTRIBUTION *of the trust funds.* A SHORT FORM. *The* DEALINGS *with the trust funds being* SHEWN *by a* SCHEDULE.

Parties, A. "and B., *a daughter*, his wife," 1; C. and D., *trustees of B.'s settlement*, 2; E., *a son*, 3; F., *a son*, 4; G., *exor of last tenant for life*, 5; K. and L., *trustees of settlement*, 6: WHAS by an indre dated, &c., and expressed, &c. (being the settlement made in consideration of the marriage which was shortly afterwards solemnized of the sd M. and N.), it was declared that the sd X. and Y., or other the trustees or trustee for the time being of the sd indre, should after the solemnization of the sd marriage either allow the stocks, funds, and securities therein mentioned, the particulars whereof are specified in the schedule hereto, to remain in their actual state of investment, or should at any time or times, with the consent of the sd M. and N., or of the survivor of them, and after the death of such survivor, at the discretion of the sd trustees or trustee for the time being, sell the same, but as to certain parts thereof, which were then reversionary or contingent, not until after the same should have fallen into possession, and invest

Recital of settlement.

(*c*) As this deed affects C.'s interest in the real estate settled in trust for sale she must acknowledge it. See *Franks* v. *Bollans*, L. R., 3 Ch. 717.

the proceeds in any of the securities therein mentioned, which included, among others, the several securities into which the investments of the sd trust premises were from time to time transposed, as appears from the sd schedule hereto, and should, &c., *trusts to pay income to M. and N., and the survivor for life, remainder for their issue, as they or survivor appoint, in default for children at twenty-one, &c., and hotchpot, advancement, maintenance, and accumulation clauses: Recitals as to issue of marriage and marriage of daughter; Appointment of K. and L. trustees in place of X. and Y. on their retirement and transfer of trust-estate; Appointment by M. and N. of part of trust funds to B. on her marriage, and assignment thereof to C. and D., her trustees; Death of M.; Appointment by N. after M.'s death to E.; Will of N. appointing G. exor, death and probate*: AND WHAS the first part of the schedule hereunder written contains a full and particular account and statement of the trust-estate and property originally comprised in or subject to the hereinbefore recited indre of settlement of, &c., and of all sales and transpositions of the investment thereof, and of all the receipts, payments, and disbursements of the sd trustees or trustee for the time being, in respect of the capital of the sd trust estate and premises, and also (since the decease of the sd N.) in respect of the income thereof: AND WHAS the second part of the sd schedule shows the particulars of the trust estate and property now remaining subject to the trusts of the sd settlement, and the mode in which the same is distributable. *Add recitals as to any matters requiring to be specially noticed:* AND WHAS the sd parties hereto of the first five parts have carefully examined the accounts contained in the sd schedule hereto, and are satisfied therewith: AND WHAS all income payable to the sd M. during his life, and since his decease to the sd N., in respect of the sd trust premises, has been duly accounted for and paid, as the sd G. doth hereby acknowledge: AND WHAS the sd K. and L. have, at the request of the sd several parties hereto of the first four parts, agreed to make the several payments

Explanation of schedule.

Approval of accounts.

Application of income.

Agreement for distribution and release.

PREC. VIII. and transfers mentioned in the second part of the sd schedule hereto upon having such release as is hereinafter
Release. contained: NOW THIS INDRE WITNESSETH that in pursuance of such agreement, and in consideration of the several payments and transfers mentioned in the second part of the sd schedule having been made by the sd K. and L., at the request of the sd several parties hereto of the first four parts, as they do respectively hereby acknowledge: They, the sd A. and B. his wife, C., D., E., F., and G., according to their several and respective rights and interests, do, and every of them doth hereby release the sd K. and L., and each of them, their, and each of their heirs, exors, admors, estates and effects, from all actions, proceedings, claims, and demands, in respect of the trust estate and property comprised in or at any time subject to the trusts of the sd indre of settlement of, &c., or of any of the acts, matters, and things mentioned or implied in the sd schedule hereto, or otherwise in relation to the premises.

IN WITNESS, &c.

The schedule referred to in the above-written indre.

Schedule of accounts in two parts.

IX.

PREC. IX. RELEASE *by* RESIDUARY LEGATEES *to* EXECUTORS *and* TRUSTEES *of a* WILL *comprising* REAL *and* PERSONAL *Estate, except as to* CERTAIN TRUST FUNDS.

Parties, A., B., "and C., his wife," D., E., "and F., his wife," *residuary legatees and husbands of married women*, 1;
Recitals. G. and H., *exors and trustees*, 2. *Recite Will giving legacies and containing a general devise and bequest to G. and H. in trust for conversion, the proceeds to be applied in payment of funeral and testamentary expenses, debts, and legacies, and*

PREC. IX.

thereto in trust for such of the testator's children as survive him; Direction that daughters' shares should be held on trusts for the benefit of themselves and their children, and appointment of G. and H. exors; Codicil bequeathing a legacy; Death of testator and probate: AND WHAS the sd A., C., D., and F., are the only children of the sd testator who survived him, and they have all attained the age of twenty-one years: AND WHAS the sd testator was at his decease seised or possessed of, or entitled to certain real and leasehold estates situate at, &c.: AND WHAS the sd G. and H. have got in and converted all the personal estate of the sd testator which was not specifically bequeathed by his sd will, and have paid thereout all his funeral and testamentary expenses and debts, and the legacy duties payable under his sd will and codicil, and have paid or provided for the pecuniary legacies bequeathed by his sd will and codicil, and the net residue of the sd personal estate amounts to £——: AND WHAS the sd G. and H. have sold the whole of the real and leasehold estate of the sd testator, and after payment of the costs, charges, and expenses of, and incidental to, the sd sale, the net proceeds arising from such sale amounted to the sum of £——, making, with the sd sum of £——, the sum of £——: AND WHAS the sd G. and H. have paid one equal fourth part of the sd sum of £—— to each of them, the sd A. and D., as they do respectively hereby acknowledge, and have invested one other fourth part of the same sum in the purchase of £—— New £3 per Cent. Bank Annuities in their own names, to be held upon the trusts in the sd will expressed for the benefit of the sd C. and her children, and have invested the remaining one-fourth part of the sd sum in the purchase, in their own names, of £—— £3 per Cent. Consolidated Bank Annuities, to be held upon the trusts in the sd will expressed for the benefit of the sd F. and her children: AND WHAS the sd G. and H. have rendered to the sd several persons parties hereto of the first part accounts of the real and personal estate of the sd testator, and of the sale, conversion, and getting in thereof

Children.

Property.

Administration of personal estate.

Sale of real and leasehold estates.

Division of estate.

Accounts, &c.

PREC. IX.

respectively, and of the application of the moneys arising from such sale, conversion, and getting in, and have also duly paid or accounted to the sd several parties hereto of the first part for all rents and profits arising from the sd real and leasehold estates, from the death of the sd testator until the completion of the sd sale, and all income which has accrued from the sd personal estate, as the sd several parties hereto of the first part do respectively hereby declare, and being satisfied with such accounts, they have agreed to give to the sd G. and H. such release as is hereinafter contained: NOW THIS INDRE WITNESSETH that in pursuance of the sd agreement, and in consideration of the premises, they, the sd parties hereto of the first part, do, and every of them doth, hereby release and for ever discharge the sd G. and H., and each of them, their, and each of their heirs, exors, and admors, from all actions, proceedings, accounts, claims, and demands, for, or in respect of, the real and residuary personal estate of the sd testator, or any part thereof respectively, or the moneys arising from the sale, conversion, and getting in of the same respectively, or the rents, profits, dividends, interest, or income thereof respectively [or for or in respect of any sale, conversion, investment, payment, application, valuation, act, or thing made, done, or executed, or neglected, or omitted by the sd G. and H., or either of them, in the administration of the sd estate, or the execution of the trusts of the sd will and codicil], or for, or in respect of, any other thing in anywise relating to the premises: PROVIDED ALWAYS that the release hereinbefore contained shall not extend to the sd respective sums of New £3 per Cent. Bank Annuities and £3 per Cent. Consolidated Bank Annuities retained by the sd trustees to be held upon the trusts in the sd will mentioned for the benefit of the sd C. and her children, and the sd F. and her children as aforesd, or the dividends or income thereof respectively.

Release.

Not to extend to property retained by trustees.

IN WITNESS, &c.

X.

DEED *of* RELEASE, CONFIRMATION, *and* INDEMNITY *by the Parties* INTERESTED *under a* WILL, *in respect of the* TRUSTEES *having* RETAINED *part of the* REAL ESTATE UNSOLD, *and in respect of a* SALE *to a* SON *of the* TESTATOR *at a* VALUATION, *and* RELEASE *by the* WIDOW *of her* LIFE INTEREST *in the Purchase-money to the Son.* PREC. X.

Parties, A., *widow*, 1; B., C., D., and E. his wife, F., and G. his wife, *children, and husbands of married daughters*, 2; B., *son*, 3; L., M., and N., *trustees*, 4. *Recite Will containing residuary devise and bequest in trust for sale and conversion, and trust of proceeds for A. for life, remainder to children at twenty-one, &c.; Death and probate; State of family; Testator's title to estate:* AND WHAS after the death of the sd testator it was considered that an immediate sale of the sd estate was undesirable, and it was accordingly arranged, with the approbation and consent of all the sd parties hereto of the first and second parts, that the same should remain unsold, and should be cultivated and kept up at the expense of the sd testator's estate: AND WHAS it has been lately agreed between the sd trustees and the sd B., with the approbation and consent of all the sd other parties hereto of the first and second parts, that the sd estate should be sold to the sd B. for the sum of £——, being the sum at which the same has been valued by X. and Y.: AND WHAS the sd sale is intended to be forthwith carried into effect by a proper conveyance: AND WHAS the sd A., at the request of the sd B., and in order to provide him with the necessary capital for carrying on the cultivation of the sd estate and his other requirements, has agreed to release her life interest in the sd sum of £—— constituting the purchase-money of the sd estate in manner hereinafter mentioned, to the intent that such sum may be forthwith paid or transferred by the

Recitals.

That estate has been retained unsold.

Agreement for sale to son.

Agreement for release of life estate.

PREC. X.

sd trustees to the sd B., in part satisfaction of his share in the sd residuary estate, subject to the deduction of the legacy duty payable in respect thereof, and the costs of and incidental to these presents and the carrying out of the sd arrangement, which it has been agreed shall be paid thereout: AND WHAS the sd parties hereto of the first and second parts have respectively agreed to execute such confirmation and release, and the same parties, other than the sd E. and G., have respectively agreed to enter into such covenants of indemnity as are hereinafter contained: NOW THIS INDRE WITNESSETH that, in consideration of the premises, the sd parties hereto of the first and second parts, according to their several estates and interests, do respectively hereby ratify and confirm the sd sale, or intended sale, of the sd estate to the sd B., and do hereby authorise and empower the sd trustees to carry such sale into effect, and do respectively hereby release and discharge the sd L., M., and N., and every of them, their and every of their, heirs, exors, and admors, from all claims, demands, actions, and proceedings, in respect of the sd estate having been retained unsold as aforesd, or any loss arising from such retention, or in respect of the sd sale of the sd estate to the sd B.: AND EACH of them the sd parties hereto of the first and second parts, other than the sd E. and G., doth hereby for himself or herself, his or her heirs, exors, and admors, covenant with the sd L., M., and N. respectively, and their respective exors and admors, that they the sd covenanting parties respectively and their respective heirs, exors, and admors, will at all times keep the sd L., M., and N., and every of them, and their and every of their, heirs, exors, and admors, effectually indemnified against all actions, proceedings, claims, and demands on the part of any person or persons, and in particular on the part of the sd E. and G., or either of them, or any person or persons claiming under them or either of them, and from all costs, damages, and expenses, for or in respect of the sd estate having been retained unsold as aforesd, or in respect of the sd sale

Agreement for release, &c.

Release.

Covenant of indemnity.

thereof to the sd B., or in relation to any of the matters aforesd: AND THIS INDRE ALSO WITNESSETH that the sd A. doth hereby release and surrender to the sd B., his exors and admors, all the estate and interest of the sd A. for her life in the sd sum of £—— arising from the sale of the sd estate to the sd B., to the intent that such sum shall forthwith, or as soon as circumstances will admit, be paid or transferred by the sd trustees to the sd B., his exors or admors, in part satisfaction of his share in the sd residuary estate, subject to and after deduction and payment thereout of the legacy duty payable in respect thereof, and the costs hereinbefore mentioned. PREC. X. Release of life interest.

IN WITNESS, &c. (*a*)

XI.

RELEASE *to* ADMINISTRATOR *of Intestate, the* NEXT *of* KIN *being the* SON *(and admor) of the Intestate, and a* DAUGHTER *whose* SHARE *is in* SETTLEMENT. PREC. XI.

Parties, A. and B. his wife, 1; C., D., and E., 2; F., 3: WHAS X., late of, &c., died on the —— day of —— intestate and a widower, leaving the sd B. and F., his only children and next of kin: AND WHAS letters of administration of the personal estate and effects of the sd X., were on the —— day of —— granted out of the —— District Registry of the Probate Division of the High Court of Justice to the sd F.: AND WHAS the personal estate of the sd X. consisted of the several stocks, shares, and securities, set forth in the schedule hereunder written, of a leasehold messuage, lands, and hereditaments known as, &c., and situate, &c., together with the furniture and effects in and about the same, and of the moneys and debts (amounting in the whole to £——) which have been received by the sd F., the par- Recitals. Death, &c. Administration. Particulars of personal estate.

(*a*) This deed must be acknowledged by E. and G. See above, p. 1018, note (*c*).

PREC. XI.

ticulars whereof are set forth in the sd schedule: AND WHAS the sd F. as such admor as aforesd has sold the sum of £—— Stock, forming part of the estate of the sd X., for the sum of £——, and has invested the sum of £——, part thereof, in the purchase of —— Debentures of £—— each in the —— Railway Company: AND WHAS the sd F. has also sold the sd leasehold messuage and premises for the sum of £——, and a portion of the sd furniture and effects for the sum of £——, making, with the moneys hereinbefore mentioned to have been received by him and not to have been re-invested, the sum of £——, being the full amount of money which has come to the hands of the sd F. as such admor as aforesd, exclusive of income: AND WHAS the sd F. has received dividends, rents, and income in respect of the sd estate to the amount of £——, in the whole making, with the sd last-mentioned sum, the sum of £——: AND WHAS the sd F. has paid and discharged all the debts, funeral, and administration expenses of the sd X., and the rent payable in respect of the sd leasehold premises, and the administration and legacy duties payable in respect of the personal estate of the sd X., and the expenses of the sale of the sd leasehold premises, which payments amount in the whole to the sum of £——, leaving a cash balance of £—— in the hands of the sd F., as such administrator as aforesd. *Recite settlement on the marriage of A. and B., of which C., D., and E., are trustees, containing a provision for settlement of after-acquired property of B.:* AND WHAS the sd F., with the privity and consent of the sd A. and B., and also of the sd C., D., and E., has set apart such portions of the sd stocks, shares, and securities as are mentioned in the —— column of the sd schedule hereto as the share of the sd B., and the value of which amounted at the time of the appropriation thereof to £——, and retained for his own benefit such portions thereof as are mentioned in the —— column of the sd schedule, the value of such last-mentioned portion amounting at the period aforesd to £——: AND WHAS the sd F. has divided the unsold portion of the sd furniture and

Sale of stock.

Sale of leasehold.

Income.

Payments made.

Division of stocks, &c.

Furniture, &c.

effects between the sd B. and himself, the value of the portion appropriated to the sd B. being £——, and of the portion appropriated to the sd F. £——, according to the valuation thereof respectively made by Mr. ——: AND WHAS the stocks, shares, and securities appropriated in respect of the share of the sd B. as aforesd; have been transferred by the sd F. to the sd C., D., and E., as trustees of the sd settlement: AND WHAS the costs of and incidental to these presents have been paid out of the aforesd cash balance in the hands of the sd F., leaving the sum of £——, a moiety whereof, amounting to £——, added to the value of the stocks, shares, and securities, and the furniture and effects appropriated in respect of the share of the sd B., constitutes the moiety of the sd B. of the estate of the sd X.: AND WHAS the sd last-mentioned sum of cash has been paid to the sd C., D., and E., as such trustees as aforesd: AND WHAS the accounts of the sd F., as such administrator as aforesd, have been submitted as well to the sd A. and B. as to the sd C., D., and E., for examination, and have been approved of by them: AND WHAS for the greater satisfaction of the sd F., the sd parties hereto of the first and second parts have agreed to execute to him the release hereinafter contained: NOW THIS INDRE WITNESSETH that in pursuance of such agreement, the sd parties hereto of the first and second parts, do and each and every of them doth hereby release and discharge the sd F., his heirs, exors, and admors, from all actions, proceedings, accounts, claims, and demands whatsoever, for or on account of the estate and effects of the sd X. deceased, or the administration thereof, or the conversion, sale, application, investment, valuation, apportionment, appropriation, and distribution thereof, or of the proceeds thereof, or for or in respect of the dividends, rents, and income thereof, or any other matter or thing relating to the premises.

Transfer to trustees.

Costs, &c.

Cash balance.

Accounts.

Agreement for release.

Witnesseth.

Release.

IN WITNESS, &c.

The Schedule above referred to.

Schedule.

XII.

PREC. XII.

RELEASE *of a* POWER *to* JOINTURE.

Parties, A., *tenant for life and donee of power*, 1; B., *reversioner*, 2. WHAS under or by virtue of an indre dated, &c., *the settlement*, and of an indre dated, &c., *a disentailing deed*, and of the events and matters recited mentioned or implied in the sd last-mentioned indre, the sd A. is tenant for life of certain manors, messuages, lands, and hereditaments, situate in the parishes of ——, in the county of ——, with remainder to the sd B. in fee simple, subject to a power by the sd indre of settlement given or reserved to the sd A. by deed or will to charge the sd hereditaments, or any part thereof, with a rent-charge not exceeding £—— per annum in favour of any wife who may survive him, during her life, by way of jointure, and to limit or create the usual powers and remedies, and a term of years for securing the same: AND WHAS it has been agreed between the sd A. and B., that in consideration of, &c., *state consideration*, the sd A. should release the sd power of jointuring in manner hereinafter appearing: NOW THIS INDRE WITNESSETH that in pursuance of the sd agreement, and in consideration of, &c., he the sd A. doth hereby absolutely release unto the sd B., his heirs and assigns, all that the sd power of jointuring by the sd indre of settlement given or reserved to the sd A. as aforesd, to the intent that the same shall henceforth be absolutely extinguished and cease to be exerciseable.

Recitals.

Witnesseth.

IN WITNESS, &c.

XIII.

RELEASE *by* CREDITORS *to* DEBTOR *under a Composition effected* WITHOUT RECOURSE *to the* BANKRUPTY *Act*, 1869 (*a*). PREC. XIII.

THIS INDRE, &c., between the several persons whose names and descriptions are contained in the schedule hereto (hereinafter called the creditors) of the one part, and A. of, &c., of the other part: WHAS the sd A. is indebted to each of the creditors in the sum written opposite to his or her name in the schedule hereto: AND WHAS the creditors have agreed to accept a composition of —— shillings in the pound in full discharge of their sd debts: NOW THIS INDRE WITNESSETH, and it is hereby mutually agreed and declared as follows:— Recitals. Witnesseth.

1. THE SD A. shall, on or before the —— day of —— next, pay to each of the creditors who shall execute these presents before that day, a composition of —— shillings in the pound on his or her sd debt, which they hereby agree to accept in full satisfaction and discharge of their sd respective debts. And in case such composition shall be duly paid each of them, the creditors, doth hereby release the sd A., his heirs, exors, and admors, estate and effects, from his or her debt, and doth agree that such release shall be binding and effectual, although some of the creditors of the sd A. may not execute these presents, and although the creditors who shall not execute the same, or any of them, shall receive payment in full.

2. PROVIDED ALWAYS that in case the sd A. shall commit an act of bankruptcy before the sd —— day of ——, in respect of which he shall be adjudicated a bankrupt, or in case he shall

(*a*) If there is a dissentient minority of creditors whom it is necessary to bind, proceedings must of course be taken under the Act. For forms of composition and other deeds taking effect under the Act, see 5 Davidson, Prec., Part 2, 3rd ed. p. 521, *et seq.*

PREC. XIII. not on or before the sd —— day of —— pay to each of the creditors who shall execute these presents before that day, the sd composition of ——shillings in the pound on his or her debt as hereinbefore is provided, then these presents shall be void.

IN WITNESS, &c.

The schedule above referred to.

Name of Creditor.	Address. &c.	Debt.	Amount of composition.	Signature and seal of Creditor.	Witness to execution by Creditor.

XIV.

PREC. XIV. MUTUAL RELEASE *by* THREE.

Parties, A., 1; B., 2; C. 3. WITNESSETH that every one and every two of them, the sd A., B., and C., doth and do hereby release the others, and each of the others of them, their, and his heirs, exors, admors, and assigns, and their and his estates and effects, from all sums of money, accounts, contracts, agreements, covenants, bonds, actions, proceedings, claims, and demands whatsoever, which any one or any two of them, the sd A., B., and C., now hath or have, or at any time heretofore hath or have had against the others, or either of the others of them, for or by reason or in respect of any act, matter, cause, or thing whatsoever, up to the day of the date of these presents.

IN WITNESS, &c.

SEPARATION DEEDS.

SEPARATION Deed *between* Husband *and* Wife *containing* Various Provisions (*a*).

Parties, A., *husband*, 1; B., *wife*, 2; C. and D., *trustees*, 3. Recitals.

Whas unhappy differences have arisen between the sd A. and B., by reason whereof they have agreed [by mutual consent, but at the request of the sd A.] to live separate and apart from each other for the future, and to enter into the arrangement hereinafter contained: And whas the sd A. has issue by the sd B. —— children, that is to say, *state names and ages of the children:* [And whas the sd B., or the sd A. and B. in her right; is, or are, entitled to the real and leasehold hereditaments hereinafter described, which, it has been agreed, shall be granted and assigned in manner hereinafter expressed]: And whas the sd C. and D. have, at the request of the sd B., agreed to act as trustees for the purpose of the arrangement intended to be hereby made, and also to enter into the covenants and obligations hereinafter contained: NOW THIS INDRE WITNESSETH that in pursuance of the sd agreement, and for the considerations herein appearing, he, the sd A., doth hereby, for himself, his heirs, exors, and admors, so far as the agreements and provisions hereinafter contained are, or ought to be performed or observed by him or them, cove-

Agreement for separation.

Children.

Wife entitled to realty and leaseholds.

Agreement by trustees to join.

Witnesseth.

(*a*) See 5 Davidson, Prec., Part 2, 3rd edit., 667, *et seq.* Pollock on Contracts, 246, *et seq.* Macqueen on Husband and Wife, chap. 4. This Precedent contains various alternative provisions adapted to different cases.

nant with the sd C. and D., their exors and admors, [And the sd B. doth hereby, for herself, her heirs, exors, and admors, to the intent to charge and bind her separate estate, so far as the agreements and provisions hereinafter contained are, or ought to be performed or observed by her or them, covenant with the sd C. and D., their exors and admors,] And the sd C. and D. do hereby, for themselves respectively, and their respective heirs, exors, and admors, so far as the agreements and provisions hereinafter contained are, or ought to be performed or observed by the sd B., or the sd C. and D., or their respective heirs, exors, or admors, or any of them, covenant with the sd A., his exors and admors, in manner following, that is to say :—

Liberty to wife to live apart from husband.

1. It shall be lawful for the sd B., at all times hereafter, to live separate and apart from the sd A., and free from his marital control and authority, as if she were sole and unmarried, and to reside from time to time at such place [and to carry on such trade, business, or occupation], as she may think proper, without any interference whatever on the part of the sd A.

Husband and wife not to molest, &c., each other.

2. Neither of them, the sd A. and B., shall molest the other of them [or any member or members of his or her family], or compel or endeavour to compel the other of them to cohabit or dwell with him or her by any legal proceedings for restitution of conjugal rights or otherwise howsoever (*b*).

Not to take proceedings for a divorce, &c.

3. Neither of them, the sd A. and B., shall take any proceedings against the other of them to obtain a divorce or judicial separation in respect of any misconduct which has heretofore taken place, or is alleged to have taken place, on the part of the other of them (*c*).

Husband to pay annuity to trustees for wife.

4. The sd A. shall, during the joint lives of himself and the sd B. [provided the sd B. shall remain chaste (*d*)], pay

(*b*) See *Hunt* v. *Hunt*, 31 Beav. 89 ; 4 D. F. & J. 221.

(*c*) See *Thomas* v. *Everard*, 6 H. & N. 448.

(*d*) In the absence of such a provision, the husband would be liable to continue the annuity, notwithstanding the subsequent adultery of the wife, *Evans* v. *Carrington*, 2 D. F. & J. 481.

to the sd C. and D., their exors, admors, and assigns, the sum of £—— per annum, to be apportionable according to law, but to be payable quarterly on the usual quarter-days, the first payment to be made on the —— day of —— next, upon trust for the sd B., for her separate use, and she shall not have power to anticipate the same.

Husband to pay gross sum to trustees.

[5. *Covenant by A., to pay £—— to trustees on demand, with interest in the meantime at —— per cent. per annum to be held in trust to invest and vary investments, and to pay income to B. during joint lives for separate use, without power of anticipation, and after death of A. or B. in trust for survivor absolutely. Proviso, that if, and so long as A. shall, during joint lives, punctually pay to trustees the interest on the £——, then the trustees shall not compel payment of the £——. See* SETTLEMENTS PERSONAL.]

Wearing apparel, &c., of wife, and after-acquired property, &c., to belong to her for her separate use.

6. ALL THE wearing apparel and personal ornaments of the sd B., and all moveable personal property belonging to the sd A. now in her possession, and all property, whether real or personal, which the sd B. or the sd A. in her right may hereafter acquire [by purchase, gift, settlement, devise, bequest, inheritance, or] by any means whatsoever during their coverture [other than property which is included in the agreement contained in the marriage settlement of the sd A. and B. for the settlement of after-acquired property of the sd B.,] (*c*) and all earnings and profits which may be made by the sd B. in any business, trade, or occupation, and all savings which may be made or derived by her from her income or separate estate, shall belong to the sd B. for her separate use, and be at her absolute disposal, as if she were sole and unmarried, and on her death in the lifetime of the sd A. without having disposed of the same during her

(*c*) The words in this bracket should be inserted if the marriage settlement contains the usual covenant to settle the wife's after-acquired property. If the wife is entitled to any interest in real or leasehold property, it should be conveyed as in the next clause, so as to enable her to dispose of the legal as well as beneficial interest, without the husband's concurrence, and to bind her heir; and if the deed affects her real estate it must be acknowledged.

lifetime, or by will, the whole, or the undisposed of part thereof, as the case may be, shall belong to the persons or person who would have become entitled thereto, if the sd A. had died in the lifetime of the sd B.

Further testatum : conveyance of freehold and leasehold estates of wife.

[7. *If the wife has real or leasehold estates which are to be settled to her separate use, add the following*: AND THIS INDENTURE ALSO WITNESSETH that in further pursuance of the sd agreement, and in consideration of the premises, the sd B., with the concurrence of the sd A., doth hereby grant, and the sd A. doth hereby grant and confirm, unto the sd C. and D., their heirs and assigns, *Parcels*, p. 251 ; *General words*, p. 264 ; *Estate clause*, p. 264 ; *Habendum to trustees to such uses as B. shall appoint, in default to use of trustees for B.'s separate use*, p. 331, *omitting the words referring to any future coverture. Add, if necessary, in a separate testatum, an assignment of wife's leaseholds and choses in action not reduced into possession to the trustees, habendum*, to the sd C. and D., their exors, admors, and assigns, upon trust for the sd B., her exors, admors, and assigns, for her sole and separate use, independently of the sd A. and of his debts, control, and engagements, *for leaseholds add*, " and to permit the sd B., her exors, admors, and assigns, whose receipt shall be a sufficient discharge for the same, to receive, &c., *as at page*, 331 "] (*f*).

Husband to allow wife's will to be proved.

8. If the sd B. shall die in the lifetime of the sd A., he shall permit her will to be proved, or administration to her goods and chattels to be taken out by the person or persons who would have been entitled to do so had the sd A. died immediately before her.

Custody of infant children.

9. The sd B. shall have the sole custody and control of, *here name children*, and of their education and bringing up until they respectively attain the age of — years (*g*),

(*f*) If it is desired to exclude the husband's marital rights in the event of the wife dying in his lifetime without disposing of the property, the provision at the end of the last clause should be added.

(*g*) See 36 & 37 Vic., c. 12. Notwithstanding the paternal right, the Court will take the custody of the children away from a father who has been

without any interference whatsoever on the part of the sd A.

Expense of maintenance of infant children.

[10. If and so often and so long as any child or children of the sd A. and B. shall during the joint lives of the sd A. and B. be living with or under the control of the sd B., the sd A. shall pay to the sd trustees or trustee in trust for the sd B., the sum of £—— per annum in respect of each such child being under the age of — years, and the sum of £—— per annum in respect of each such child being over the age of — years and under the age of twenty-one years and unmarried, such respective yearly sums to be apportionable according to law, but to be payable quarterly on the usual quarter-days, and to be applied by the sd B. in or towards the maintenance and education or otherwise for the benefit of such children or child, but without liability to account so long as she shall maintain and educate such children or child to the satisfaction of the sd trustees or trustee. The sd A. shall also pay the funeral expenses of any child who shall die while living with or under the control of the sd B.] [*or*, The sd B. shall, out of her own moneys, provide and pay for the maintenance and education of the children or child for the time being living with her or under her control by virtue of these presents.] [*or*, Each of them, the sd A. and B., shall, out of his or her own moneys, provide and pay for the maintenance and education of any children or child during any period or periods while such children or child shall be living with him or her, or under his or her control.]

Access to children.

11. The sd A. and B. shall respectively at all convenient and reasonable times, to be settled in case of dispute by the sd trustees or trustee for the time being, have access to and communication with the children or child for the time being living with or under the control of the other of them [or at school as hereinafter is mentioned.]

Schools for boys.

12. The sd K., L., and M., *the boys*, shall, as and when

guilty of grave misconduct. *Swift* v. *Swift*, 34 Beav. 266, 4 D. J. & S. 710; *Hamilton* v. *Hector*, L. R. 13 Eq. 511.

they respectively attain the age of — years, be placed at the expense of the sd A. at such schools in England as he, or at such schools elsewhere as he, with the consent in writing of the sd B., [*or*, as the sd trustees or trustee] shall from time to time determine; such of them the sd K., L., and M., as shall for the time being be at school, shall pass the holidays at such places and in such manner as the sd trustees or trustee shall from time to time direct, having regard to the reasonable wishes of the sd A. and B.

Power to trustees to change custody of children.

13. It shall be lawful for the sd trustees or trustee, if circumstances shall arise which in their or his opinion render it absolutely necessary for the welfare of the children or child for the time being living with or under the control of either of them the sd A. and B., to remove such children or child, and to place them, him, or her, with or under the control of the other of them the sd A. and B.

Trustees to indemnify husband against wife's debts.

14. The sd C. and D., and each of them, their and each of their heirs, exors, or admors, shall from time to time and at all times hereafter indemnify and keep indemnified the sd A., his heirs, exors, and admors, from all debts and liabilities heretofore or hereafter to be contracted or incurred by the sd B., and from all actions, proceedings, claims, and demands, costs, damages, and expenses whatsoever in respect of such debts and liabilities or any of them.

Proviso that annuity, &c., shall in certain events cease to be payable.

15. In case the sd A. shall be obliged to pay any sum or sums of money for or on account of any debt or liability heretofore or hereafter contracted or incurred by the sd B., or in case the sd B. shall at any time take any proceedings against the sd A. for restitution of conjugal rights or otherwise for compelling him to cohabit with her, or shall at any time directly or indirectly molest the sd A. [or any member or members of his family], then and in any of such cases the sd annuity of £—— shall cease to be payable, [*or*, the sd sum of £——, secured by the covenant of the sd A., and the interest thereof, shall cease to be payable, and if the same sum shall have been paid by the sd A. to the sd trustees or trustee, the same and the investments and income thereof

shall thenceforth be held in trust for the sd A., his exors, admors, and assigns absolutely.]

[16. In case the sd A. shall at any time or times hereafter be called upon to pay or discharge, and shall actually pay or discharge any debt or liability heretofore or hereafter contracted or incurred by the sd B., then and in every such case it shall be lawful for the sd A. to deduct and retain out of the sd annuity of £—— [to deduct and retain, or be reimbursed out of the sd sum of £—— hereinbefore covenanted to be paid by him, or the interest thereof,] the amount which he the sd A. shall have so paid in respect of such debt or liability, together with all costs and expenses which he shall have paid or incurred on account thereof, but so that this present provision shall not in anywise render the sd A. liable to the payment of any of the debts of the sd B., or prejudice his rights or remedies under the covenant of indemnity of the sd C. and D. hereinbefore contained.]

Proviso that debts paid by husband may be deducted from annuity.

17. Each of them, the sd A. and B., or their respective heirs, exors, or admors, shall at any time execute and do all such assurances and things as the sd trustees or trustee shall reasonably require for the purpose of giving full effect to these presents and the covenants, agreements and provisions herein contained.

Covenant for further assurance.

18. Provided always, and it is hereby agreed and declared, that if the sd A. and B. shall be reconciled, and return to cohabitation [or if their marriage shall be dissolved, or they shall be judicially separated (*h*), by reason of any misconduct of the sd B. [occurring after the date hereof]], then, and in such case, all the covenants and provisions herein contained shall become void, but without prejudice to any [sale or other] act previously made or done hereunder, or any proceedings on the part of any of the parties hereto in respect of any then antecedent breach of any of the covenants or provisions herein contained. [And the sd trustees or trustee shall stand seised and possessed of any

Proviso in case of reconciliation or dissolution of marriage.

(*h*) See p. 1032, note (*d*).

real and personal property then vested in them or him by virtue of these presents, subject and without prejudice to any dispositions or engagements theretofore made or entered into with respect to the same by the sd B., to such uses, and upon such trusts, as will most nearly correspond with the uses and trusts to which the same would then respectively be subject if these presents had not been executed.]

Provision as to appointment of new trustees.

19. THE POWER of appointing a new trustee of these presents in the place of the sd C., or of any trustee to be appointed in his place, shall be vested in the sd A., and the power of appointing a new trustee hereof in the place of the sd D., or of any trustee to be appointed in his place, shall be vested in the sd B.

IN WITNESS, &c.

SETTLEMENTS (PERSONAL)(*a*).

RECITALS (*b*).

I. WHAS a marriage is intended shortly to be solemnized between the sd, *intended husband and wife*. Intended marriage.

II. AND WHAS the sd A. is absolutely entitled to the several stocks, funds, shares, and securities following, that is to say, &c., *or*, "specified in the schedule hereto," and upon the treaty for the sd intended marriage it was agreed that the same should be transferred to the sd, *trustees*, in trust for the sd A., his exors and admors, until the sd intended marriage, and afterwards upon the trusts and with and subject to the powers and provisions hereinafter declared and contained concerning the same. Title to stocks, &c., in possession, and agreement for settlement.

III. AND WHAS under the will of X., deceased, dated, &c., and a codicil thereto, dated, &c., and which were proved in the —— court [*or*, registry] &c., on the —— day of ——, the sd A. [as one of the children of K., deceased,] is absolutely entitled in possession to one equal —— part or share of the residuary personal estate [and of the proceeds of the sale and conversion of the real estate] of the sd testator, which estate, so far as at present realized and ascertained,] consists of or is represented by the several stocks, funds, shares, securities and property specified in the schedule Title in possession to share of residuary estate and to a possible further share, and agreement for settlement.

(*a*) The forms under this head include those for land settled as personalty by means of a trust for sale. See Davidson, Prec. vol. iii.; Elphinstone, Introd. Conv. 265, *et seq.*

(*b*) See also the forms of recitals in "CONVEYANCES," p. 231, *et seq.*

hereto (*c*), and now standing in the names of or otherwise vested in or under the legal control of the sd L. and M. as trustees of the sd will, *or*, "the particulars and amount of which estate have not yet been ascertained"; and the sd A. may [in the event of the death of any of the other children of the sd K., being a son or sons under the age of 21 years, or being a daughter or daughters under that age and unmarried] [*or*, in certain events,] become entitled to a further share or shares of such residuary estate and premises; and upon the treaty for the sd intended marriage it was agreed that the share or shares of such residuary estate and premises to which the sd A. is or may become entitled as aforesd should be assigned to the sd, *trustees*, in manner hereinafter appearing, upon the trusts and with and subject to the powers and provisions hereinafter declared and contained concerning the same.

Title to reversionary share in trust funds under settlement or will.

IV. AND WHAS under an indre, dated, &c., and expressed to be made, &c., [the will of the late K., dated, &c., and a codicil thereto, dated, &c., which will and codicil were proved on the —— day of —— in the —— court [*or*, registry] &c.,] [and a deed poll of appointment, dated, &c., under the hand and seal of ——,] the sd A. is [will upon the sd intended marriage become] absolutely entitled to the sum of £—— Bank Annuities, part of a larger sum of Bank Annuities subject to the trusts of the sd settlement, [will and codicil,] *or*, "to one equal —— part or share of the trust funds, securities, and property [which now are or by means of the accruer of any other property under the provision in the sd indre contained for the settlement of after-acquired property of the sd X., shall at any time become] subject to the trusts of the sd indre, [will and codicil,]" *or*, "to one equal —— part or share of all and singular the trust funds, securities, and property, subject to the trusts of the sd indre, [will and codicil,] which shall remain after satisfying a previous appointment in favour of L., a daughter of the sd X., made by a deed poll,

(*c*) The particulars of the trust funds should be given, so far as ascertained, for the purpose of the ad valorem stamp duty.

dated, &c.," subject to the life interest of the sd X. therein [subject to certain prior interests therein during the lives and life of the sd X. and Y., and the survivor of them].

Particulars of trust property.

v. And whas the property subject to the trusts of the sd indre of settlement, [will and codicil,] *or*, "representing the residuary estate of the sd testator, [so far as the same has at present been realised and ascertained]," (*d*) consists of, *state investments, as*, "the sum of £—— debenture stock of the —— Railway Company, the sum of £—— invested on mortgage of a freehold estate at ——, in the county of ——, &c.," *or*, "consists of the stocks, funds, shares, and securities specified in the schedule hereto," which are respectively standing in the names of or vested in or under the legal control of L. and M., the trustees of the sd indre of settlement, [will and codicil].

The same, where consisting of land held as personalty.

vi. And whas the property subject to the trusts of the sd indre of settlement consists of certain freehold, copyhold, and leasehold hereditaments, situate, &c., which have been purchased under a power contained in the sd indre, and are now vested in and held by L. and M., the trustees of the said indre, upon certain trusts in such indre contained for the sale of the sd hereditaments, and for the application of the net sale moneys, and of the net profits of the sd hereditaments, or of the unsold part thereof for the time being, upon the trusts thereinbefore declared concerning the moneys applied in the purchase thereof, and the income of such moneys.

Agreement for settlement of reversionary or other share of property derived under settlement or will.

vii. And whas upon the treaty for the sd intended marriage it was agreed that all the share or shares of the sd A., whether in possession, reversion, or expectancy, and whether vested or contingent, of or in, &c., should be assigned to the sd, *trustees*, their exors, admors, and assigns, in manner hereinafter appearing, upon the trusts and with and subject to the powers and provisions hereinafter declared and contained concerning the same.

(*d*) See last page, note.

Transfer of stock, shares, debentures, or other like property.

VIII. AND WHAS pursuant to an agreement made upon the treaty for the sd intended marriage, the sum of £—— Consolidated, *or*, "Reduced," *or*, "New," £3 per cent. Bank Annuities [—— shares of £—— each in, *or*, "—— Debentures for £—— each of," the —— Company,] [*or*, the several stocks, shares, debentures, and securities, the particulars whereof are specified in the schedule hereto,] belonging to the sd A. have been, [*or*, are intended forthwith to be] transferred by him, [or by his direction] into the names of the sd, *trustees*, to the intent that the same shall be held in trust, &c., *as in form* II.

Transfer of bonds to bearer or other property passing by delivery.

IX. AND WHAS pursuant to an agreement made upon the treaty for the sd intended marriage, —— Bonds of the —— Government for £—— each, [for sums amounting in the aggregate to £——,] bearing interest at the rate of £—— per cent. per annum, [the bonds and securities the particulars whereof are specified in the schedule hereto,] belonging to the sd A. have been, [*or*, are intended forthwith to be] delivered by him, [or by his direction,] to the sd, *trustees*, to the intent that the same shall be held in trust, &c., *as in form* II.

Transfer of stocks, &c., pursuant to recited agreement.

X. AND WHAS the transfer agreed to be made as aforesd of the sd stocks, funds, shares, and securities to the sd, *trustees*, has been, [*or*, is intended forthwith to be] duly made and perfected.

Title to and agreement for settlement of policy or policies on husband's life.

XI. AND WHAS the sd A., *intended husband*, is absolutely entitled to a policy of assurance effected on his life and in his own name for the sum of £—— with the —— Assurance Society, dated, &c., numbered, &c., and under the annual premium of £——, [and to another policy effected, &c.,] and upon the treaty for the sd intended marriage, it was agreed that the same policy [respective policies] should be assigned to the sd, *trustees*, *&c.*, *as in form* III.

The same where effected in names of trustees.

XII. AND WHAS pursuant to an agreement in that behalf made upon the treaty for the sd intended marriage, the sd A., *intended husband*, has effected an assurance on his life for the sum of £——, in the —— Office, by a policy

No. ——, Series ——, in the names of the sd, *trustees*, under the annual premium of £—— [and another assurance, &c.,] to the intent that the same policy [respective policies] shall be held in trust, &c., *as in form* II.

XIII. AND WHAS the sd A. is absolutely entitled to a mortgage debt of £—— and interest secured on certain hereditaments, situate at, &c., [belonging to X.,] by an indre, &c., and pursuant to an agreement made upon the treaty for the sd intended marriage, the sd A. has, by an indre bearing even date with and executed before these presents, and expressed to be made, &c., transferred the sd mortgage debt and interest, and the securities for the same, to the sd, *trustees*, in trust for the sd A., his exors and admors, until the sd intended marriage, and afterwards upon such trusts and with and subject to such powers and provisions as should be declared concerning the same by an indre of even date therewith therein referred to, meaning these presents.

Title to mortgage and transfer to trustees.

XIV. AND WHAS pursuant to an agreement in that behalf made upon the treaty for the sd intended marriage, by an indre bearing even date with and executed before these presents, and expressed to be made, &c., the sd A., *intended husband*, with the approbation of the sd B., *intended wife*, has assured certain freehold hereditaments situate in the parish of —— and county of ——, and therein particularly described, to the use of the sd A. and his heirs until the sd intended marriage, and afterwards to the use of the sd, *trustees*, their heirs and assigns, upon the trusts and with and subject to the powers and provisions thereinafter declared and contained concerning the same; [And by the same indre the sd A., with the like approbation, has assigned certain leasehold hereditaments, situate, &c., to the sd, *trustees*, their exors, admors, and assigns, for the residue of the respective terms granted by the therein recited several indres of lease under which the same are severally holden, but subject to the payment of the respective rents and performance and observance of the respective covenants on the part of the lessees and conditions by and in such indres of lease respec-

Conveyance in trust for sale of freeholds to trustees. Variations for leaseholds and copyholds.

tively reserved and contained, Upon trust for the sd A., his exors and admors, until the sd intended marriage, and afterwards, upon the trusts, &c., *as above;* And by the same indre the sd A., with the like approbation, has covenanted with the sd, *trustees*, their heirs and assigns, that he, the sd A., or his heirs, and all other necessary parties, if any, will forthwith, at his or their own costs, surrender certain copyhold hereditaments, situate, &c., and held of the manors of —— and ——, to the use of the sd, *trustees*, their heirs and assigns, according to the customs of the several manors of which the same are respectively holden, Upon trust for the sd A. and his heirs until the sd marriage, and afterwards, upon the trusts, &c., *as above;*] And it is thereby declared that the sd, *trustees*, or the [survivors or] survivor of them, or the heirs, [exors, or admors,] of such survivor, shall, at the request or at the discretion therein mentioned, sell the sd freehold, [leasehold, and copyhold] premises, or any of them, in manner therein mentioned, and shall stand possessed of the net moneys to arise from any such sale, and the net rents and profits of the sd premises, or of the unsold part thereof for the time being, after making payment thereout respectively of such expenses as are therein mentioned, upon such trusts and with and subject to such powers and provisions as should be declared and contained concerning the same respectively by and in an indre of even date therewith therein referred to, meaning these presents.

Agreement as to settlement of wife's after-acquired property.

XV. AND WHAS it has been also agreed that such agreement should be entered into with reference to the settlement of the other present or future acquired property of the sd, *intended wife*, as is hereinafter contained.

As to covenant to be entered into for payment of annual or principal sum.

XVI. AND WHAS upon the treaty for the sd intended marriage, it was further agreed that the sd —— should enter into such covenant as is hereinafter contained for the payment to the sd, *trustees*, of the annual sum, *or*, "principal sum and interest," hereinafter mentioned, to be held and applied upon the trusts and in manner hereinafter expressed.

XVII. AND WHAS it has been also agreed that these presents shall contain the several covenants, clauses, and provisions hereinafter contained. General agreement.

CLAUSES.

I. NOW THIS INDRE WITNESSETH that in pursuance of the sd agreement in this behalf, and in consideration of the sd intended marriage, the sd, *husband* [*wife*], with the approbation of the sd, *wife* [*husband*], doth hereby assign unto the sd, *trustees*, their exors, admors, and assigns, ALL, &c., *parcels* (*e*): and all the estate, right, title, interest, claim, Assignment by husband or wife of personal estate to trustees. Variation where the assignment is by a separate deed.

(*e*) The following forms of parcels for personal estate are adapted to the more ordinary cases. For a vested reversionary interest under a settlement, "ALL THAT the sd moiety, *or*, 'equal —— part or share' [or other the part or share] to which he the sd A. is [or will upon the sd intended marriage, or in any other event, become] entitled under or by virtue of the sd indre of settlement of, &c., [and the sd deed poll of appointment of, &c.,] of or in the trust funds and property comprised in or [which are now or may at any time become] subject to the trusts of the sd indre of settlement, expectant on the decease of the sd X. and Y., and subject to their respective life interests therein, as hereinbefore mentioned." For a vested share and possible additions by accruer, &c., of a legacy, "ALL THAT equal —— part or share [or other the part or share] to which the sd A. is entitled under or by virtue of the sd will and codicil of the sd L., and all other, if any, the part or share, or parts or shares, to which he may hereafter become entitled by accruer, survivorship, or otherwise, in the event of the death of any of the other children of the sd X. and Y., under the age of twenty-one years, or in any other event, Forms of parcels. Personal estate. Vested reversion. The same, with possible accretions.

and demand of the sd, *husband*, [*wife*,] in, to and upon the same [respective] premises: To have and to hold the sd —— and premises hereinbefore expressed to be hereby assigned [subject to the aforesaid interest of the sd, *prior tenants for life*, therein] Unto the sd, *trustees*, their exors, admors, and assigns, In trust for the sd, *husband*, his, [*wife*, her] exors and admors, until the sd intended marriage, and afterwards [upon the trusts and with and subject to the powers and provisions hereinafter declared and contained concerning the same] [upon such trusts, and with and subject to such powers and provisions as shall be declared and contained concerning the same, respectively, in and by an indre already prepared, intended to bear even date with, and to be executed

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of or in the sd legacy or sum of £—— bequeathed by the sd will in trust as hereinbefore recited, or the investments or property now or from time to time representing the same, and of or in the accumulations thereof, expectant on the decease of the sd X. and Y., and subject to their respective life interests therein."

Share of residue under will.

For a share in possession of a residuary estate under a will, "All that the sd equal —— part or share [or other the part or share] of the sd A., under the sd will and codicils of the sd L., of or in the residuary personal estate, and the proceeds of the sale of the real and leasehold estate of the sd testator, and the investments and property now or hereafter representing the same respectively."

Contingent interest.

For a contingent interest, "All the part or share, parts or shares, or the whole, as the case may be, to which the sd A. will, in the event of his attaining the age of —— years, *or*, 'in the event of his surviving the sd X.,' or in any other event, become entitled of or in, &c., and the accumulations thereof under, &c.," *or*, "All and every the part or share, parts or shares, and interests whatsoever, to which the sd A. is now in anywise entitled, in possession, reversion, expectancy, contingency, or otherwise, under or by virtue of, &c., or by any means whatsoever, of or in, &c., and of or in all existing and future accumulations thereof, subject

immediately after these presents, and to be made between, *parties*, [the same parties as these presents]].

II. AND [EACH OF THEM] THE SD, *husband*, [and, *wife*, so far as relates to the acts of himself, or herself, and of all persons claiming through or under him or her respectively], doth hereby for himself [or herself], his [or her] Covenant for further assurance of personalty by husband. Variation where wife joins.

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to the prior interests in or affecting the same." For a policy or policies of assurance, "ALL THAT the sd policy [ALL THOSE the sd respective policies] of assurance on the life of the sd A. in the sd —— Society [and —— Society] to which he the sd A. is entitled, as hereinbefore recited, and the sd sum of £—— [respective sums of £—— and £——] assured thereby, and all bonuses and additions thereto [respectively], *or, if not recited,* "ALL THAT policy of assurance for the sum of £—— on the life of him the sd A., effected in the —— Society, dated, &c., and numbered, &c., and under the annual premium of £——, [and also all that other policy, &c.,] and all moneys assured by or to become payable under the same policy [respective policies]," *or,* "ALL THOSE —— several policies of assurance, the particulars whereof are specified in the schedule hereunder written, and all moneys, &c." For a mortgage debt, "ALL THAT the sd principal sum of £—— [forming part of the sd sum of £——] owing on the security of the sd indre of mortgage of, &c., and the interest now due, and henceforth to become due, on the same, and the full benefit of all securities for the same principal sum and interest." For furniture, &c., "ALL AND SINGULAR the furniture, plate, pictures, prints, [diamonds, jewels, trinkets, personal ornaments,] and other articles and effects belonging to the sd A., which are particularly described in the schedule hereunder written," *or,* "ALL the furniture, plate, and other articles of household or domestic use or ornament which are now in or about the messuage or dwelling-house in which he the sd A. now resides, situate and being, &c., or the out-buildings, gardens, or appurtenances thereof."

Life policy or policies.

Mortgage debt.

Furniture, &c.

heirs, exors, and admors, covenant with the sd, *trustees*, their exors, admors, and assigns, that he [they], the sd, *husband*, [and, *wife*, respectively], and all persons claiming, through, or under him [them respectively], will at all times hereafter, at the request of the sd, *trustees*, or the [survivors or] survivor of them, or the exors or admors of such survivor or other the trustees or trustee for the time being of these presents (hereinafter called the sd trustees or trustee (*f*)), or of any person for the time being interested in the premises, and at the cost of the trust estate, execute and do every such assurance and thing for the further or more perfectly assuring the sd premises hereinbefore expressed to be hereby assigned, or any part thereof (*g*), unto the sd trustees or trustee, and enabling them or him to obtain possession of and receive the same, as shall be reasonably required.

Trust for investment.

III. THE SD [(*h*), *trustees*, or the [survivors or] survivor of them, or the exors or admors of such survivor, or other the trustees or trustee for the time being of these presents hereinafter called the sd] trustees or trustee shall either allow the whole or any part of the sd sum of £—— Bank Annuities [the sd stocks, funds, shares, securities, and premises hereinbefore stated to have been transferred to the sd trustees, *or*, "the sd sums of £—— and £—— invested on mortgage as aforesd," *or if the pro-*

(*f*) This abbreviated expression is used throughout the remainder of these forms of clauses, on the assumption that it will have been interpreted as in the text in the first place where it occurs.

(*g*) Where stocks, &c., though vested in possession and immediately transferable, may not be actually transferred till after the marriage, add here, "and also, if the transfer of any of the sd stocks, funds, shares, or securities, which have been agreed to be transferred to the sd trustees as aforesd, shall not have been made or perfected before the solemnization of the sd intended marriage, for making and perfecting such transfer thereof."

(*h*) The words in this bracket will be omitted if the phrase, "the sd trustees or trustee," has already been interpreted, as above.

perty is reversionary, "the sd shares and interests hereinbefore assigned to the sd trustees, as and when the same respectively shall fall into possession and be received by the sd trustees or trustee," or any of them, or any part or parts thereof respectively] to remain in the actual state of investment thereof, so long as the sd trustees or trustee may think fit, or shall at any time or times, with the consent in writing of the sd, *husband* and *wife*, or the survivor of them, during their, his, or her lifetime, and after the death of such survivor, at the discretion of the sd trustees or trustee, sell [call in, or convert into money (*a*)], the same, or any of them, or any part thereof respectively, and (*b*) invest the moneys produced thereby [or any other principal moneys which may be otherwise received by the sd trustees or trustee in respect of the sd trust premises (*a*)] in the names or name [or under the legal control (*c*)] of the sd trustees or trustee in or upon, &c., *form* IV., V., *or*, VI.

Investments. Restricted range.

IV. ANY OF the public stocks, or funds, or Government Securities of the United Kingdom or India, or any securities, the interest on which is, or shall be, guaranteed by Parlia-

(*a*) Insert the words in these two brackets, if there are mortgage-debts, debentures, &c., which may be called in or paid off, or reversionary interests. The following words may be substituted for the second bracket if it is desired to provide more specifically for debentures or reversions :—"and also all principal moneys which may be received upon the payment or discharge at maturity of all or any of the debentures or securities aforesd," *or*, "and also all principal moneys which may be received in respect of the sd shares and interests hereinbefore assigned, or any part thereof, when the same shall fall into possession."

(*b*) Where the settlement includes also a sum of money in possession, say here, instead of the words in the text, "and shall, with the like consent, or at the like discretion, invest the moneys produced thereby, and the sd sum of £—— [when the same shall have been received by them or him] in the names," &c., as in the text.

(*c*) If securities passing by delivery are *not* authorised, omit the words here bracketed.

ment, or in stock of the Bank of England or Ireland, or of the Metropolitan Board of Works, or upon freehold, copyhold, or leasehold securities in England, Wales, or Ireland (*d*) [but not in Ireland], or in any other investment in which trust funds, or cash under the control of the Chancery Division, may for the time being be authorised by law to be invested, but not in any other mode of investment, and may, with such consent or at such discretion as aforesd, vary or transpose such investments into or for others of any nature hereinbefore authorised.

Investments. Fair range.

v. Any of the public stocks, or funds, or Government Securities of the United Kingdom or India, or any Colony or Dependency of the United Kingdom, or any securities, the interest on which is, or shall be, guaranteed by Parliament, or in stock of the Bank of England or Ireland, or of the Metropolitan Board of Works, or upon freehold, copyhold, or leasehold securities in England, Wales, or Ireland, or in or upon the debentures or debenture stock of any Railway Company in the United Kingdom or India, or the shares or stock of any such Railway Company, a fixed or minimum rate of dividend on which is guaranteed by the same or any other company or the Government of India, or secured by means of a fixed rental payable by any other company (*e*), or upon charges created under the Im-

(*d*) The above are the statutory securities (exclusive of real security in Scotland, but with the addition of leasehold securities). See 22 & 23 Vict., c. 35, s. 32; 23 & 24 Vict., c. 38, ss. 10, 11, G. O., 1st. Feb., 1861; 30 & 31 Vict., c. 132, ss. 1, 2; 32 & 33 Vict., c. 106, s. 16; 34 & 35 Vict., c. 47, s. 13. See Davidson, Prec., 3rd ed., Vol. III., pp. 19 *et seq.*, 710, 711, notes; Morgan's Chancery Acts, p. 260, 5th ed. As to charges under the Improvement of Land Act, 1864 (27 & 28 Vict., c. 114), see that Act, s. 60. As to debentures issued under the Mortgage Debenture Act, 1865 (28 & 29 Vict., c. 78), see that Act, s. 40, and the Mortgage Debenture Amendment Act, 1870 (33 & 34 Vict., c. 20, ss. 15, 16). As to debentures of local authorities, see the Local Loans Act, 1875 (38 & 39 Vict., c. 83, s. 27); and as to debenture stock, see 34 Vict., c. 27.

(*e*) If thought proper, add here, "or in or upon the debentures, debenture stock, or securities, or the guaranteed or preference stock or shares of any company in the United

provement of Land Act, 1864, or any mortgages thereof, or debentures issued under the Mortgage Debenture Act, 1865, or in or upon the bonds, debentures, or securities of or issued by any public, municipal, or local body or authority in the United Kingdom [or any Colony or Dependency thereof], or on the security of rates or tolls made or levied by any such body or authority, and may with such consent, &c., *as in last form.*

Investments. Extensive range.

VI. ANY OF the public stocks, or funds, or Government Securities of the United Kingdom or India, or any Colony or Dependency of the United Kingdom, or any Foreign Government or State, or in stock of the Bank of England or Ireland, or of the Metropolitan Board of Works, or in or upon freehold, copyhold, or leasehold (*f*) securities in England, Wales, Ireland, or Scotland [but so that Scotch heritable bonds taken as security shall be deemed in equity to be personal estate], or on the security of any interest for a life or lives, or determinable on a life or lives in real or personal property together with a policy or policies of assurance on such life or lives, or on the security of any real or immoveable (*g*) property in India, or in any Colony or Dependency of the United Kingdom, or in any Foreign Country, or upon charges created under the Improvement of Land Act, 1864, or any mortgages thereof, or debentures issued under the Mortgage Debenture Act, 1865, or in or upon the bonds, debentures, debenture stock, mortgages, or securities, or the guaranteed preference or ordinary stock

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Kingdom, or any colony or dependency thereof, which shall have paid dividends of not less than two per cent. per annum on their ordinary capital for at least three years prior to the time of investment."

(*f*) Add, if desired, "with or without chattel personal," which will authorise a mortgage of, *e.g.*, a factory comprising machinery, plant, stock-in-trade, &c.

(*g*) Add, if desired, "with or without moveable," which will authorise a mortgage of an estate with the stock on it, as is common in the Colonies.

or shares of any company, or public, municipal, or local body or authority in the United Kingdom or India, or any Colony or Dependency of the United Kingdom, or any Foreign Country, or on the security of rates or tolls made or levied by any such body or authority as aforesd, and may with such consent, &c., *as in form* IV.

Power to lend on contributory mortgage.

VII. AND ANY such investment on mortgage may be made in conjunction with any other person or persons by way of contributory mortgage (*c*) to be taken in the joint names of the contributories to the loan, or any of them, or in the names of any trustees for such contributories, or otherwise, as may be deemed expedient.

Power to lend part of trust funds to husband.

VIII. PROVIDED ALWAYS, and it is hereby agreed and declared that it shall be lawful for the sd trustees or trustee, and it shall be obligatory on them or him, upon the requirement in writing of the sd, *husband*, [and, *wife*, during their joint lives, or of the sd, *husband*, after the death of the sd, *wife*], to advance from time to time any sum or sums of money not exceeding in the whole the sum of £—— out of any part of the sd trust premises (which the sd trustees or trustee are hereby authorised to sell, call in, or convert into money for that purpose), by way of loan to the sd, *husband*, for such period, at such rate of interest, not being less than five per cent. per annum, and upon such terms as he may require, so that the repayment of every or any sum so advanced with the interest thereon be secured by the bond or covenant of the sd, *husband*, either with or without any other security, and to allow the moneys so advanced to remain on loan as aforesd during so long as the sd, *husband*, may require [but so that the sd trustees or trustee may, at the request in writing of the sd, *wife*, during her life, and after her death, with the unanimous concurrence of all the trustees for the time being, if more than one, call in and compel payment of the same], and so that the sd trustees or trustee shall not

(*c*) As to loans by trustees on contributory mortgages, see Davidson's Prec., Vol. III., 3rd edit. p. 40; Elphinstone, Introd. Conv., 152; Lewin on Trusts, 6th ed., 292.

under any circumstances be liable for the loss of any moneys so advanced or the interest thereon : And the sd trustees or trustee shall stand possessed of the sum or sums, the payment whereof is intended to be secured as last aforesd, and the investments thereof, and the income thereof respectively, upon the same trusts, and with and subject to the same powers and provisions as the sum or sums so advanced, and the investments representing the same, and the income thereof respectively, would have been subject to or held if the same had not been so advanced.

First life interest to wife for separate use without anticipation.

IX. And shall during the life of the sd, *wife*, pay the income of the sd ——, and the investments representing the same (*d*), to the sd, *wife*, and so that during the sd intended coverture the same shall be for her separate use independently of the sd, *husband*, without power of anticipation, and her receipt alone (*e*) shall be a discharge for the same.

The same during joint lives.

X. And shall during the joint lives of the sd, *husband*, and, *wife*, pay the income of the sd ——, and the investments representing the same (*d*), to the sd, *wife*, for her separate use, &c., *as in last form.*

First life interest to husband for life or joint lives.

XI. And shall during the life of the sd, *husband*, *or*, "the joint lives of the sd, *husband*, and, *wife*," pay the income of the sd ——, and the investments representing the same (*d*), to the sd, *husband*, and his assigns.

Second life interest to husband or wife.

XII. And after the death of the sd, *wife* [*husband*], shall pay the income of the sd trust premises to the sd, *husband* [*wife*], if surviving, and his [her] assigns during his [her] life.

Income to survivor for life.

XIII. And after the death of such one of them, the sd,

(*d*) If property is brought into settlement on the part of both husband and wife, it may be convenient to use the expression, "the fortune of the sd, *wife* [*husband*]," in subsequent parts of the deed, and if so, to insert here the words, "which are hereinafter referred to as the fortune of the sd, *wife*, [*husband.*]"

(*e*) If the intended wife be an infant, add here, "as well during her minority as afterwards."

husband, and, *wife*, as shall first die, shall pay the income of the sd trust premises to the survivor of them, and his or her assigns, during his or her life.

Trust to pay annuity to wife for her separate use during joint lives, and residue of income to husband.

XIV. AND SHALL, during the joint lives of the sd, *husband*, and, *wife*, out of the income of the sd ——, and the investments representing the same, pay the yearly sum of £—— to the sd, *wife*, to commence from the sd intended marriage, and to be considered as accruing from day to day, but to be payable on the —— day of ——, &c., *specify days, or*, "on the usual quarter days," and the first payment thereof to be made on such of the sd days as shall happen next after the sd intended marriage, the same to be for the separate use of the sd, *wife*, &c., *as in form* IX., and shall during such joint lives pay the residue of the sd income to the sd, *husband*, and his assigns.

First life interest to husband determinable on bankruptcy or alienation (*f*).

XV. AND SHALL pay the income of the sd ——, and the investments representing the same (*g*), to the sd, *husband*, during his life, or until he shall become bankrupt, or shall assign or charge, or attempt to assign or charge, the sd income or some part thereof (*h*), or until some other event shall happen whereby the sd income, or any part thereof, if belonging absolutely to him, would become vested in or payable to some other person or persons.

Life interest in remainder to husband determinable on bankruptcy, &c.

XVI. AND AFTER the death of the sd, *wife*, shall, if the sd, *husband*, shall survive her, and shall not be or have been a bankrupt, and shall not have assigned or charged, or at-

(*f*) See Davidson, Prec., vol. iii., part i., pp. 108 *et seq.*, 3rd ed.; Elphinstone, Introd. Conv., 295. It should be remembered that the husband's life interest in his *own* property cannot be made determinable on bankruptcy, though it may be on alienation. See Davidson, Vol. iii. pp. 134 *et seq.*

(*g*) See p. 1053, note (*d*).

(*h*) It may be desirable that the husband should not be prevented from relinquishing or charging his life interest in favour of a child, for which purpose the following words may be introduced here, "in favour of any person other than a child of the sd intended marriage who shall have attained the age of 21 years, or shall have been married before or shall marry within six calendar months after the date of such assignment or charge."

tempted to assign or charge, the income of the sd ——, or the investments thereof, or any part thereof (*k*), and if no other event shall have happened whereby the same income, or any part thereof, would, if belonging absolutely to him, have become vested in or payable to some other person or persons (*a*), pay the sd income unto the sd, *husband*, during his life, or until he shall become bankrupt, &c., *as in last form*.

Discretionary trust for application of income on husband's bankruptcy &c., for the benefit of him and his family (*b*).

XVII. And shall, after the [death of the sd, *wife*, and the failure or] determination during the life of the sd, *husband*, of the trust hereinbefore declared of the sd income in his favour, from time to time during the remainder of his life, or during such shorter period or periods, either continuous or discontinuous, as the sd trustees or trustee shall in their or his absolute discretion think fit, pay all or any part of the sd income to or apply the same for the maintenance and personal support or benefit of all or any one or more, to the exclusion of the other or others, of the following persons, namely, the sd, *husband*, and his wife, if any, and his children or remoter issue for the time being in existence, whether by his now intended or any after-taken wife, and whether minors or adults, and the other persons or person for the time being entitled to or interested, whether absolutely, contingently, or otherwise, in the sd trust premises, or any of them, under the trusts herein contained to take effect after the decease of the sd, *husband*, in such proportions and manner as the sd trustees or trustee shall in their or his absolute and uncontrolled discretion from time to time think proper, and subject to the discretionary power lastly hereinbefore contained, shall, during such remainder of the life of the sd, *husband*, hold the sd income, or so much thereof as shall not be applied under such discretionary power, Upon the

(*k*) See p. 1053, note (*d*).

(*a*) See note (*h*), last page, saying, "other than, &c."

(*b*) As to trusts of this nature, having for their object the securing to the husband the personal enjoyment of the income in the event of bankruptcy, &c., see 3 Davidson, Prec., p. 125 *et seq.* 3rd ed.; Elphinstone, Introd. Conv., 297.

trusts and for the purposes upon and for which the sd income would for the time being be held if the sd, *husband*, were then dead.

Trust of income after bankruptcy, &c. of husband during his life, where there is no discretionary trust for his benefit (*c*).

XVIII. AND AFTER the [death of the sd, *wife*, and the failure or] determination during the life of the sd, *husband*, of the trust hereinbefore declared of the sd income in his favour, shall during the remainder of his life hold the sd income upon the trusts and for the purposes upon and for which the same would for the time being be held if he were then dead.

Proviso charging husband's life interest with maintenance of wife and children (*d*).

XIX. PROVIDED ALWAYS, and it is hereby agreed and declared, that the life interest of the sd, *husband*, in the sd trust premises shall be subject to and charged with the obligation of providing out of the income thereof a suitable residence and maintenance for the sd, *wife* (*e*), and such of the children of the sd intended marriage as shall for the time being be under the age of twenty-one years and unmarried, in priority, unless the sd trustees or trustee shall otherwise expressly determine, to any other fund applicable for that purpose, but without liability to account, so long as the sd, *husband*, shall duly provide such residence and maintenance [and shall also be subject to and charged with the obligation of making such yearly or other periodical allowance (if any) as the sd trustees or trustee shall in their or his uncontrolled discretion from time to time in writing direct or appoint for the maintenance and support of such of the children of the sd intended marriage as shall have attained the age of twenty-one years or be mar-

(*c*) If the husband is not to take a protected life interest as provided by form XVII., this clause should in general be inserted in preference to the trusts for the children being accelerated, which would involve an alteration in the common forms of those trusts.

(*d*) This form is intended for a case in which the fund is settled by the husband himself, and it is desired to protect his life interest against creditors, which could not in this case be effected in the mode provided by forms XV., XVI., and XVII. See p. 1054, note (*f*); and as to the clause in the text, see *Carr* v. *Living*, 28 Beav. 644, 33 Beav. 474.

(*e*) If the husband takes the second life interest, the provision for the wife will of course be omitted.

ried, and shall, in the opinion of the sd trustees or trustee, require so to be maintained, but so that it shall not be obligatory upon the sd trustees or trustee to give any such direction as last aforesaid, and that no adult or married child of the sd intended marriage shall in the absence of any such direction have any claim for maintenance out of the income of the sd trust premises, and so also that in case the sd, *husband*, shall assign or release his life interest in the whole or any part of the income of the sd trust premises to any child or children of the sd intended marriage, such child or children shall hold the income so assigned as aforesd discharged from the provisions hereinbefore contained for providing a suitable residence for and maintaining the sd, *wife*, and infant children, and of making an allowance for any adult or married children.]

Power to trustees to pay income to wife's bankers.

XX. PROVIDED ALWAYS, and it is hereby agreed and declared that it shall be lawful for the sd trustees or trustee so long as they or he shall deem it expedient so to do, to pay or remit the annual income hereby settled to the separate use of the sd, *wife*, to such banker or other agent as she shall appoint, or to authorize such banker or agent to receive the same for the purposes of remittance or payment in such manner as she, the sd, *wife*, shall direct; and every payment and remittance so made by the sd trustees or trustee, pursuant to such direction or authority, shall be as effectual as against the sd, *wife*, as if the same had been made into her own hands, and upon her receipt, but this provision shall not restrict the sd trustees or trustee from requiring from time to time as the sd income shall accrue due a special direction from the sd, *wife*, respecting the application thereof, or otherwise paying the same into her own hands, if they or he shall deem it advisable so to do.

Power of appointment among children. Variations where

XXI. IN TRUST for all or such one or more exclusively of the others or other (*f*) of the children [or remoter issue] of the sd intended marriage [such remoter issue to be born

(*f*) The words expressly authorising an exclusive appointment are usually inserted, although they are not now essential. See 37 & 38 Vict., c. 37.

power extends to remoter issue.

and take vested interests within twenty-one years from the death of the survivor of the sd, *husband*, and, *wife*] at such age, or time, or respective ages or times, if more than one in such shares, and with such executory and other trusts for their respective benefit, and such provisions for their respective advancement (either after the death of the survivor of the sd, *husband*, and wife, or during the lives of them, or the survivor of them, with their, his, or her, consent in writing) (*g*), and maintenance and education, at the discretion of the sd trustees or trustee, or of any other person or persons, as the sd, *husband*, and, *wife*, shall by any deed or deeds revocable or irrevocable jointly appoint: AND IN DEFAULT of, and subject to any such appointment, then as the survivor of them, the sd, *husband*, and, *wife*, shall in like manner, or by will or codicil appoint.

The same. Short form.

XXII. IN TRUST for all or any, to the exclusion of the others or other of the children [or remoter issue] of the sd intended marriage, if more than one in such shares, and in such manner in all respects, as the sd, *husband*, and *wife*, shall, &c., *as in last form*.

Proviso to be added to power of appointment where husband's interest is determinable (*a*).

XXIII. PROVIDED ALWAYS, and it is hereby declared, that in the event of the sd, *husband*, surviving the sd, *wife*, and the failure or determination in his lifetime of the trust hereinbefore declared in his favour, the power lastly hereinbefore contained shall not be exerciseable by him after such failure or determination.

Usual trusts for children in default of appointment.

XXIV. AND IN DEFAULT of and subject to any appointment under the power [respective powers] hereinbefore contained, in trust for all or any the children or child of the sd intended marriage, who, being a son or sons, shall attain the age of twenty-one years, or being a daughter or daughters, shall attain that age or marry, and if more than one, in equal shares.

(*g*) As to these words, see 3 Davidson, 3rd ed., p. 160.

(*a*) See Davidson, Prec., vol. iii., p. 799; Elphinstone, Introd. Conv., 312. This proviso is intended for use when form XVII. or XVIII. is not inserted, but the trusts for the children are to be accelerated.

Trust for children, excluding child taking estate.

XXV. In trust for all, or such one or more exclusively of the others or other of the children of the sd intended marriage, other than and except the first or only son, or any other son or sons, who before his or their respectively attaining the age of twenty-one years, shall become [indefeasibly (*c*)] entitled, or any daughter or daughters, who before her or their respectively attaining that age, or marrying, shall become indefeasibly entitled to the first estate in tail [male or in tail], either in possession, or remainder under an indre, dated, &c., *or*, "the will, dated, &c., and proved, &c., of ——," (*d*) at such age, &c., *as in form* XXI.: And in default of, and subject to any such appointment in trust for all or any the children or child of the sd intended marriage, other than and except as aforesd (*e*), who being a son, &c., *as in form* XXIV.: And if there shall be no child (other than and except as aforesd), who being a son, shall attain the age of twenty-one years, or being a daughter, shall attain that age, or marry, then in trust for such one or more of the sd excepted class of children as being a son or sons, shall attain, &c., *as in form* XXIV.

Hotchpot clause.

XXVI. Provided always, that no child, who [or whose issue] shall take any part of the sd trust premises (*f*) under any appointment by virtue of the power [either of the powers] hereinbefore contained, shall in default of appointment to the contrary be entitled to any share of the unappointed part thereof, without bringing the share or shares

(*c*) Where the eldest son of the intended marriage will not necessarily be the first tenant in tail, this word should be inserted.

(*d*) For a Scotch entail say, "entitled as heir in entail in possession or as next heir substitute to the —— estate."

(*e*) The usual power of appointment extending to *all* the children is sometimes inserted; in that case, say, "other than and except the first or only son," &c., as above.

(*f*) If a second fund is settled by reference, and it is intended that the hotchpot clause shall apply to both funds as if they formed one fund, substitute for "the sd trust premises" the words "any of the trust property hereby settled."

appointed to him or her [or to his or her issue] into hotchpot, and accounting for the same accordingly.

Advancement clause.

XXVII. PROVIDED ALWAYS, and it is hereby agreed and declared that it shall be lawful for the sd trustees or trustee, at any time or times after the death of the sd, *husband*, and, *wife*, or in their, his, or her lifetime, with their, his, or her consent in writing, to raise any part or parts not exceeding in the whole one half of the then expectant, or presumptive, or vested share of any child of the sd intended marriage in the sd trust premises, and to pay or apply the same for his or her advancement, or otherwise for his or her benefit, in such manner as the sd trustees or trustee shall think fit.

Maintenance clause (*a*).

XXVIII. AND IT IS HEREBY AGREED AND DECLARED, that the sd trustees or trustee shall, after the death of the sd, *husband*, and, *wife*, apply the whole, or any part, at their or his discretion, of the income (*b*) of the share in the sd trust premises to which any child of the sd intended marriage shall for the time being be entitled in expectancy for or towards his or her maintenance or education, and may either themselves or himself so apply the same, or may pay the same to the guardian or guardians of such child for the purpose aforesd without seeing to the application thereof.

Accumulation clause.

XXIX. AND SHALL, during such suspense of absolute vesting as aforesd, accumulate the surplus, if any, of the same income at compound interest, by investing the same, and the resulting income thereof, in any of the investments hereinbefore authorised, for the benefit of the person or

(*a*) The maintenance and accumulation clauses may usually be omitted where brevity is desired, in reliance on Lord Cranworth's Act, 23 & 24 Vic., c. 145, s. 26. See *Re Cotton*, 1 Ch. D. 232.

(*b*) Where the children may be maintained as a class, say, "income of the share or shares in the sd trust premises to which any child or children of the sd intended marriage shall for the time being be entitled in expectancy for or towards his or her maintenance or education, or towards their common maintenance or education, and may either themselves," &c.

persons who shall eventually become entitled to the principal fund from which the same shall have proceeded, and may apply the accumulations of any preceding year or years in or towards the maintenance or education of the child for the time being presumptively entitled thereto (*c*), in the same manner as such accumulations might have been applied had they been income arising from the original trust fund in the current year.

Ultimate trusts

XXX. AND IT IS HEREBY AGREED AND DECLARED, that if there shall be no child of the sd intended marriage, who being a son, shall attain the age of 21 years, or being a daughter, shall attain that age or marry, then, subject to the trusts and powers hereinbefore declared and contained, and to every exercise of such powers, the sd trustees or trustee shall stand possessed of the sd —— and premises, and the investments representing the same [the sd trust premises] and the income thereof (*d*), [*if the husband's fortune*, IN TRUST for the sd, *husband*, his exors, admors, and assigns], [*if the wife's fortune*, IN TRUST for such person or persons, and for such purposes as the sd, *wife*, shall, while discovert by deed revocable or irrevocable, or whether covert or discovert, by will or codicil, appoint; And in default of and subject to any such appointment, if the sd, *wife*, shall survive the

Of husband's fortune.

Of wife's fortune.

(*c*) Where the children may be maintained as a class, substitute for the words, "child for the time being presumptively entitled thereto," the words, "child or children for the time being the objects of the aforesd trusts for maintenance and education."

(*d*) If the trusts of the husband's and wife's fortune are declared by one clause, continue from this point as follows:—"upon the trusts following, that is to say, as to the sd —— and premises, *the husband's fortune*, and the investments representing the same, and the income thereof, IN TRUST for the sd, *husband*, his exors, admors, and assigns, and as to the sd —— and premises, *the wife's fortune*, and the investments representing the same, and the income thereof, IN TRUST for such person or persons, &c.," *as in the text.*

sd, *husband*, In trust for the sd, *wife*, her exors, admors, and assigns, but if the sd, *husband*, shall survive the sd, *wife*, then In trust for such person or persons as would have become entitled thereto under the statutes for the distribution of the personal estate of intestates at the death of the sd, *wife*, had she died possessed thereof intestate, and without having been married, (*e*) such persons, if more than one, to take as tenants in common in the shares in which they would have taken under the same statutes.]

Trusts of life policy by reference.

xxxi. And it is hereby agreed and declared, that the sd trustees or trustee shall stand possessed of the moneys which shall be received by them or him in respect of the sd policy [respective policies] of assurance, on the life of the sd —— hereinbefore expressed to be hereby assigned, [*or*, hereinbefore recited to have been effected], and of the investments representing the same, and the income thereof respectively upon the trusts, and with and subject to the powers and provisions hereinbefore declared and contained concerning the moneys to arise from the sale of the sd ——, and the investments representing the same, and the income thereof respectively, or as near thereto as the deaths of parties and other circumstances will admit.

Covenant to keep up policy.

xxxii. And the sd, *husband*, doth hereby, for himself, his heirs, exors, and admors, covenant with the sd, *trustees*, their exors, admors, and assigns, that if the sd intended marriage shall take place, he, the sd, *husband*, will not do or suffer anything whereby the sd policy [respective policies] of assurance may become void or voidable, or whereby the sd trustees or trustee may be prevented from receiving the moneys to become payable thereunder [respectively], or any part thereof, and that if the sd policy [policies, or either of them] shall become voidable, he, the sd, *husband*, will immediately thereupon, at his own cost, do all things necessary for renewing or keeping on foot the same: And

(*e*) If the intended wife is a widow having issue by a former marriage, add here, "to the sd, *husband*."

that if the sd policy, [policies, or either of them,] or any new policy to be effected as hereinafter is mentioned shall become void, he, the sd, *husband*, will immediately thereupon, at his own cost, effect or enable the sd trustees or trustee to effect a new policy or policies on his life, in their or his names or name, in such sum or sums as would have been payable under the policy or policies which shall have become void if the sd, *husband*, had then died: AND THAT every such substituted policy, and the moneys to become payable under the same, shall be held and applied upon the trusts, and with and subject to the powers and provisions hereby declared and expressed concerning the sd original policy [policies] and the moneys to become payable thereunder: AND FURTHER, THAT he, the sd, *husband*, will duly and punctually pay the annual premiums and other sum or sums of money, if any, necessary for keeping on foot the sd original policy [policies], and any substituted policy or policies, and will forthwith deliver the receipt for every such payment to the sd trustees or trustee.

Power to trustees to keep up policy.

XXXIII. AND IT IS HEREBY AGREED AND DECLARED, that it shall be lawful for the sd trustees or trustee, if in their or his uncontrolled discretion, they or he shall think fit, to apply any part of the income or capital of the sd trust premises in or towards payment of the annual premiums, and other sums, if any, necessary for keeping on foot, or restoring the sd policy [respective policies] of assurance, or any such substituted policy as aforesd, or for effecting any such substituted policy, or to borrow the amount required for any such purpose from any person interested in the sd trust premises, or from any other person or persons, and any sum or sums so borrowed, with interest for the same, after the rate of £5 per cent. per annum from the time or respective times of the same having been so borrowed, shall be repaid by the sd, *husband*, his exors or admors, to the person or persons advancing the same on demand, and in the meantime, and until repayment shall be charged for the benefit of such

person or persons on the sd policy or policies [and the other property hereby settled, or agreed to be settled](*a*). PROVIDED ALWAYS, that any moneys applied by the sd trustees or trustee out of any income or capital not belonging to the sd, *husband*, for keeping on foot, restoring, or effecting any such policy as aforesd, or in repayment of any moneys borrowed for such purpose as aforesd, shall, if the sd trustees or trustee shall so think fit, be recouped out of such of the sd trust premises, whether capital or income, as shall be payable to, or become vested in the sd, *husband*, his exors, admors, or assigns.

Option of applying bonuses in diminution of premiums.

XXXIV. PROVIDED ALWAYS, and it is hereby agreed and declared, that any bonus or bonuses which may from time to time be declared in respect of the sd policy [either of the sd policies] of assurance, or any such substituted policy as aforesd, may (but subject to the rules or any resolution of the Assurance Society in that behalf) be at the option of the sd, *husband*, applied either wholly or partially in reduction of the premiums upon such policy, and in default of, and subject to any exercise of the sd option, such bonus or bonuses shall be added to, and be subject to the same trusts, powers, and provisions, as the moneys assured by the sd policy.

Power to surrender policy and trust to accumulate proceeds.

XXXV. PROVIDED ALWAYS, and it is hereby agreed and declared that it shall be lawful for the sd trustees or trustee, if in their or his uncontrolled discretion they or he shall think fit, but during the life of the sd, *wife*, with her consent in writing, to sell the sd policy [respective policies], or any such new policy as aforesd, either by way of surrender to the office or otherwise, and they or he shall hold the net proceeds of such sale upon trust to accumulate the same by way of compound interest during the then residue of the life of the sd, *husband* (*b*), by investing the same, and the resulting income thereof, in any of the invest-

(*a*) See *Clack* v. *Holland*, 19 Bea., 262.

(*b*) It is conceived that this is not obnoxious to the Thellusson Act, 39 & 40 Geo. III., c. 98, as the husband is the settlor.

ments hereinbefore authorised, and from and after the death of the sd, *husband*, shall hold such accumulated fund, and the income thereof, upon the trusts, and with and subject to the powers and provisions hereinbefore declared and contained concerning the investments representing the sum or sums of money assured by such policy or policies, and the income thereof.

Proviso in case of policy lapsing when husband's life is not insurable.

XXXVI. PROVIDED ALWAYS, and it is hereby agreed and declared that if the sd original policy [policies, or either of them,] or any such substituted policy as aforesd, shall become void, and the life of the sd, *husband*, shall not then be insurable, or shall be insurable at a premium more than double the premium for the insurance of a healthy male of his then age, then the sd trustees or trustee shall, unless in their or his uncontrolled discretion they or he shall determine not so to do, yearly, and every year during the then residue of the life of the sd, *husband*, or such part thereof as they or he shall think fit, set aside out of the income of the sd ——, *the husband's fortune*, such sum of money as shall be equal to double the yearly premium required for insuring in such office as they or he shall select the payment on the death of a healthy male of the same age as the sd, *husband*, at the time of such policy [respective policies] becoming void, of the sum which would have been payable on the same policy [respective policies] if the sd, *husband*, had then died, and shall accumulate the same, &c., *as in last form*.

Proviso protecting trustees in case of lapse of policy.

XXXVII. PROVIDED ALWAYS, and it is hereby agreed and declared that the sd trustees or trustee shall not be chargeable or responsible for any omission or neglect to enforce the covenants hereinbefore contained on the part of the sd, *husband*, in relation to the sd original policy [policies, or either of them], or any substituted policy, or to keep up or restore any such policy, pursuant to the provisions hereinbefore contained.

Covenant by husband or by father of

XXXVIII. AND THE SD —— doth hereby for himself, his heirs, exors, and admors, covenant with the sd, *trustees*, their exors, admors, and assigns, that in case the sd intended

husband or wife for payment of a gross sum to the trustees, with interest in the meantime.

marriage shall take place, he, the sd, *covenantor,* his exors or admors, will, within six calendar months from the sd marriage, pay to the sd trustees or trustee the sum of £—— with interest thereon after the rate of £—— per cent. per annum, from such marriage; and if the sd sum of £—— shall not be paid within such six calendar months, will pay to the sd trustees or trustee interest for the same, or for the unpaid part thereof for the time being, after the rate aforesd by equal half-yearly payments, the first of such payments to be made at the end of six calendar months from the sd marriage: PROVIDED ALWAYS that the sd trustees or trustee shall not call in the sd principal sum of £——, or any part thereof, [*where the husband covenants say,* in the lifetime of the sd, *husband,* without the consent in writing of the sd, *wife,*] [*where the father of husband or wife covenants say,* in the lifetime of the sd, *covenantor,* without the consent in writing of the sd, *husband,* and, *wife,* or the survivor of them,] [and after the death of the sd, *wife,* [such survivor,] in the lifetime of the sd, *covenantor,* without the concurrence of all the trustees for the time being, if more than one]; and that the sd trustees or trustee shall not be liable for any loss occasioned by their or his omission or neglect to enforce the sd covenant in the lifetime of the sd, *covenantor:* PROVIDED ALSO that the sd, *covenantor,* shall be at full liberty to pay the sd sum of £——, or any part thereof, to the sd trustees or trustee at any time during his life, although payment thereof shall not have been called for: AND IT IS HEREBY AGREED AND DECLARED that the sd principal sum hereinbefore covenanted to be paid by the sd, *covenantor,* and the investments thereof, and the interest and income thereof respectively shall be held and applied by the sd trustees or trustee upon the like trusts, and subject to the like powers and provisions as are herein declared and contained concerning the sd ——, and the investments thereof, and the income thereof respectively [save and except that if there shall be no child of the sd intended marriage, who being a son shall attain the age of twenty-one years, or being a

Declaration of trust.

daughter shall attain that age or marry, then subject to the trusts and powers aforesd, and to every exercise of such powers, the sd trustees or trustee shall stand possessed of the sd principal sum so to be paid, and the investments and income thereof in trust for the sd, *covenantor*, his exors, admors, and assigns].

Covenant for payment of a sum to trustees on death of covenantor (*c*).

XXXIX. AND THE SD —— doth hereby for himself, his heirs, exors, and admors, covenant with the sd, *trustees*, their exors, admors, and assigns, that in case the sd intended marriage shall take place, the exors or admors of him, the sd, *covenantor*, shall within six calendar months after his death pay to the sd trustees or trustee the sum of £—— with interest thereon after the rate of £—— per cent. per annum from the day of his death : PROVIDED ALWAYS that the sd, *covenantor*, shall be at liberty at any time during his lifetime to pay the sd sum of £——, or any part thereof, to the sd trustees or trustee. *Declaration of trust as in last form.*

Covenant by father of husband or wife to make up his or her reversionary interest to a given sum.

XL. And the sd, *father*, doth hereby, for himself, his heirs, exors, and admors, covenant with the sd, *trustees*, their exors, admors, and assigns, that if the sd intended marriage shall take place, and if at the death of the [survivor of the] sd, *father*, [and —— his wife], the part or share or parts or shares by the sd deed-poll of the —— day of——, [*or*, hereby] appointed to, or in favour of, the sd, *husband or wife*, or to which he [she] may become entitled in default of appointment, of or in the property comprised in, or subject to the trusts of the sd indre of the —— day of ——, [*or*, the will and codicils of the sd ——] shall not amount in value in the whole to the sum of £——, then the exors or admors of the sd, *father*, shall within —— calendar months after the death of the [survivor of the] sd, *father*, [and —— his wife]

(*c*) Where the instructions are to insert a covenant to leave a sum by will to be held upon the trusts of the settlement, this form should be adopted. See 3 Davidson Prec. 3rd ed., 804 n. For a form of covenant to give by will an aliquot share of the covenantor's estate, see *ib.*, 844, note ; but such covenants are open to great objections, see *ib.* 805, note.

pay to the sd trustees or trustee such a sum of money as, with the value computed as aforesd of the sd part or share, or parts or shares, shall make up the sum of £——, with interest thereon at the rate of £4 per cent. per annum from the death of the [survivor of the] sd, *father*, [and —— his wife]: *Declaration that the principal sum, &c., shall be held upon the like trusts as*, "any principal moneys to be received by the sd trustees or trustee from or in respect of the part or share so appointed as aforesd, &c.," *see form* XXXVIII.

Covenant by husband's father to pay an annuity to trustees. Variation where it is variable in amount, and where charged on his life interest in the settled property.

XLI. AND the SD, *father*, doth hereby for himself, his heirs, exors, and admors, covenant with the sd, *trustees*, their exors, admors, and assigns, that in case the sd intended marriage shall take place, he the sd, *father*, will during his life pay to the sd trustees or trustee a yearly sum of £—— [will pay to the sd trustees or trustee such yearly sum as is hereinafter mentioned, that is to say, during the joint lives of the sd, *father*, and, *husband*, the sum of £——, and in case the sd, *husband*, shall die in the lifetime of the sd, *father*, then during the remainder of the life of the sd, *father*, if and so long as the sd, *wife*, or any issue of the sd intended marriage shall be living, the sum of £——,] such sum of £——, [or £——, as the case may be,] to accrue from day to day, but to be payable on the —— day of ——, &c., *specify days, or*, "on the usual quarter-days," and the first payment thereof [respectively] to be made on such of the same days as shall happen next after the sd intended marriage [or the death of the sd, *husband*, as the case may be], [AND THE SD, *father*, doth hereby charge such annual sum of £——, [sums of £——, and £——,] on his life interest under the sd indre of settlement, of, &c., in the sd trust premises [a share of which is hereby settled,] but without prejudice to the powers of varying or changing investments contained in the sd indre of settlement, and doth hereby direct that the trustees or trustee for the time being of the sd indre of settlement, shall from time to time pay such annual sum accordingly out of the income and annual produce of the same trust premises in satisfaction of the covenant of the sd,

father, in that behalf hereinbefore contained]: AND IT IS HEREBY AGREED AND DECLARED that the sd trustees or trustee shall pay the sd annual sum of £—— to the sd, *husband*, and his assigns during his life, and after the death of the sd husband shall pay and apply such annual sum [the sd annual sum of £——] if and so long as the same shall continue payable by the sd, *father*, to the persons for the purposes and in the manner to whom and for and in which the income of the sd trust premises hereinbefore expressed to be hereby assigned by the sd B., *or, as the case may be*, would for the time being be payable or applicable under and by virtue of the trusts, powers, and provisions herein declared and contained. Declaration of trust of annuity.

XLII. AND THE SD —— doth hereby for himself, his heirs, exors, and admors, covenant with the sd, *trustees*, their exors, admors, and assigns, that he, the sd, *covenantor*, will not exercise the power of testamentary appointment given to him by the sd indre of settlement, of, &c., as aforesd, so as by any means to reduce the share or interest of the sd —— in the trust funds and premises subject to the trusts of the same indre, below the share to which the sd —— would be entitled in default of any exercise of the sd power of testamentary appointment, and if the same trust premises had wholly devolved under the trust in default of appointment in the sd indre of settlement contained. Covenant restricting the exercise of a testamentary power of appointment among children (*d*).

XLIII. UPON TRUST that the sd, *trustees*, or the [survivors or] survivor of them, or the heirs (*e*) of such survivor or other the trustees or trustee for the time being of these presents [(*f*) hereinafter called the sd trustees or trustee] Trust for sale of real estate. Variations for leaseholds.

(*d*) A covenant of this nature was upheld in *Davies* v. *Huguenin*, 1 H. & M. 730; but see *Coffin* v. *Cooper*, 2 Dr. & Sm., 365; *Bulteel* v. *Plummer*, L. R. 6 Ch., 160; *Thacker* v. *Key*, L. R., 8 Eq., 408.

(*e*) For leaseholds only, say, "exors or admors," for freeholds and copyholds with leaseholds, say, "heirs, exors, or admors respectively."

(*f*) This definition, making the words "trustees or trustee"

shall during the lives or life of the sd, *husband*, and, *wife*, or the survivor of them, at their, his, or her request in writing, and after the decease of such survivor, at the discretion of the sd trustees or trustee, sell the sd hereditaments and premises hereby assured (*g*), either together or in parcels, and either by public auction or private contract, and subject to such conditions as they or he shall think fit, with power to buy in or rescind or vary any contract for sale, and to re-sell without being responsible for loss, and for the purposes aforesd, or any of them, to execute and do all such assurances and things as they or he shall think fit: AND SHALL out of the moneys arising from any such sale pay the costs of such sale or otherwise incurred in respect of the premises, and shall hold the residue of such sale moneys, and also the rents and profits of the sd hereditaments and premises until the same respectively shall be sold, upon the trusts and with and subject to the powers and provisions (*a*) declared and contained concerning the same respectively in and by an indre already prepared, intended to bear even date with and to be executed immediately after these presents, and to be made between, *parties* [the same parties as these presents].

Power to manage real estate until sale.

XLIV. PROVIDED ALWAYS, and it is hereby agreed and declared, that it shall be lawful for the sd trustees or trustee, after the sd intended marriage, and before all the sd hereditaments hereby assured (*g*) shall be sold, to manage or superintend the management of the same premises, or of

include the "heirs" of a surviving trustee, may be conveniently used if the conveyance in trust for sale is made by a separate deed, otherwise it should be omitted. See above, p. 1048, note (*f*).

(*g*) Or, "granted, assigned, and covenanted to be surrendered," or as the case may be.

(*a*) If the conveyance in trust for sale is not made by a separate deed, say, "hereinafter declared and contained concerning the same respectively."

the unsold part thereof for the time being, including power to cut timber and underwood for sale, repairs, or otherwise, to open and work mines, minerals, quarries, and brickfields, and to erect, pull down, and repair houses and other buildings, and to drain and make roads and fences, and otherwise to improve all or any of the sd premises, and to insure houses and buildings against loss or damage by fire, and to make allowances to and arrangements with tenants and others, and to accept surrenders of leases and tenancies, and generally to deal with the property as if they or he were absolute owners or owner thereof, without being responsible for any loss or damage that may happen thereby: And also power to delegate either expressly or by implication during such period or periods, and upon such terms as they or he shall think fit, the exercise of all or any of the powers of management and improvement hereinbefore contained to the sd, *husband*, or the sd, *wife*, or to any other person interested under these presents, without being responsible for any loss occasioned thereby: And also power conclusively to determine either by way of anticipation or otherwise, and either expressly or by implication what part, if any, of the produce of timber, mines, minerals, quarries, or brickfields, shall be applied as capital, and what part, if any, as income, and so that such part as shall be determined to be capital shall be disposed of as if the same were proceeds of a sale under the trust hereinbefore contained: And also power to raise and pay the costs and expenses attending the exercise of the sd powers of management and improvement out of the income, or as to any part not exceeding two-third parts of the sums, if any, expended in improvements which they or he shall consider to be of a permanent nature, by mortgage or sale under the trust for sale hereinbefore contained or otherwise out of the capital of the sd trust premises.

The same. Short form.

xlv. Provided always, and it is hereby agreed and declared, that it shall be lawful for the sd trustees or trustee to manage the sd hereditaments and premises until

the same shall be sold, including power to cut timber and underwood for sale, repairs, or otherwise, and to repair and insure houses and buildings, and to make allowances to and arrangements with tenants and others, and to accept surrenders of leases and tenancies, and also to delegate either expressly, or by implication, all or any of the powers lastly hereinbefore contained to the person for the time being entitled to the rents and profits of the same premises, without being responsible for any loss which may happen thereby: And also to determine whether the proceeds of timber cut, or any part thereof, shall be treated as income or capital, and so that the part treated as capital shall be applied as if the same were proceeds of a sale under the trust hereinbefore contained: And also power to pay the costs of management out of the rents and profits of the sd premises.

Power to grant leases of unsold land (*b*).

XLVI. AND IT IS HEREBY AGREED AND DECLARED that it shall be lawful for the sd trustees or trustee to demise all or any of the sd hereditaments and premises hereby as

(*b*) If it is probable, owing to the nature of the property, that many leases will have to be granted, it will be convenient to vest the leasing powers in the tenants for life, so as to avoid constant applications to the trustees. If this is done, the clause may commence as follows:—"AND IT IS HEREBY AGREED AND DECLARED that it shall be lawful for the sd, *husband*, and, *wife*, and the survivor of them during their, his, or her lifetime, and after the death of such survivor for the sd trustees, &c.," as in the text. A lease of freeholds made by a tenant for life under such a power would operate as an appointment of the use so as to pass the legal estate under the Statute of Uses, but a lease of leaseholds or copyholds would operate in equity only, and, therefore, if the settlement comprises leaseholds or copyholds, the following clause should be added:—"PROVIDED ALWAYS, and it is hereby agreed and declared, that the sd trustees or trustee shall, if required by the sd, *husband*, and, *wife*, or the survivor of them, be bound (but without thereby incurring any responsibility) to concur in any lease made by them, him, or her, under the power lastly hereinbefore contained, or shall at any time afterwards, on being so required, confirm the same

sured,(*c*) and which shall for the time being remain unsold, for any term of years not exceeding 21 years [or for a mining lease not exceeding 40 years, or for a building or improving lease not exceeding 99 years] (*d*) to take effect in possession, or within six calendar months from the date of the demise, at the best rent that can reasonably be obtained without taking a fine or premium, but so that in case any lease shall be granted on the surrender or determination of a then existing or prior lease or tenancy, the value of the interest so surrendered, or the tenant right or claim to compensation for improvement or otherwise in respect of such tenancy, may be taken into account in fixing the rent and terms of the new lease.

The same. Short unrestricted form (*b*).

XLVII. AND IT IS HEREBY AGREED AND DECLARED that it shall be lawful for the sd trustees or trustee to demise all or any part of the sd hereditaments and premises hereby assured (*c*), and which shall for the time being remain unsold, for any term of years, either in possession or reversion, and for any purpose, with or without taking a fine or premium, and upon such terms and conditions, in all respects, as they or he shall think fit, but so that any sum received as a fine or premium shall be applied as if the same were proceeds of a sale under the trust hereinbefore contained, and so that in case any lease shall be granted on the surrender, *&c., as in last form.*

Addition to powers of sale and

XLVIII. PROVIDED ALWAYS and it is hereby agreed and declared that no sale shall be made under the trust in

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by demising the legal estate to the lessee for the term granted by such lease, but so that any such demise by way of confirmation shall contain proper provisions for annexing the benefit of the lessee's covenants and conditions contained in the lease to the legal reversion."

(*c*) Or, "granted, assigned, and covenanted to be surrendered," or as the case may be.

(*d*) If the property comprises building land or minerals of any importance, full powers of granting building and mining leases should be inserted, which may readily be adapted from the forms in SETTLEMENTS (REAL), *infra.*

Leasing where a reversionary interest is settled.

that behalf hereinbefore contained of any of the sd hereditaments which are reversionary until the same shall fall into possession, unless in the opinion of the sd trustees or trustee an earlier sale would be beneficial, provided nevertheless that the same hereditaments or any part thereof may be sold or leased under the trusts or powers hereinbefore contained during the lifetime of the sd, *prior tenant for life*, with his concurrence, so as to effect a sale in possession, or a lease to take effect in possession or within six calendar months from the date of the lease, and so that in case of any sale during the lifetime of the sd, *prior tenant for life*, the sd trustees or trustee shall with his consent in writing invest the net proceeds of such sale in the names or name [or under the legal control] of the sd trustees or trustee in or upon, &c., *investments*, p. 1049 *et seq.*, and may with such consent as aforesd, from time to time vary such investments: AND SHALL during the life of the sd, *prior tenant for life*, pay the income of the sd proceeds of sale and the investments representing the same to him or his assigns: AND AFTER HIS DEATH shall hold the same proceeds of sale and the investments thereof upon the trusts, *&c., as in form* XLIII.

The same, where an undivided share is settled.

XLIX. PROVIDED ALWAYS and it is hereby agreed and declared that the several trusts and powers of sale, leasing, and management hereinbefore contained may be executed in relation to the undivided part or share [parts or shares] hereby assured (*e*) solely, or in conjunction with the person or persons entitled to or having power in that behalf over the other undivided part or share, parts or shares, of and in the sd hereditaments and premises in relation to the entirety of the sd premises or any part thereof, and so that in the latter case any proceeds of sale, rents, expenses, or outgoings may be apportioned after the same shall have been received, paid, or incurred [and that notwithstanding that

(*e*) Or, "granted assigned and covenanted to be surrendered," or as the case may be.

any of the sd trustees, or a sole trustee, may be entitled to or interested in any of the other parts or shares of the sd premises] (*f*).

Power of partition.

L. PROVIDED ALWAYS and it is hereby agreed and declared that it shall be lawful for the sd trustees or trustee at such request or discretion as aforesd to concur with the person or persons entitled to or having power in that behalf over the other part or share, parts or shares, of or in the sd hereditaments and premises, in making a partition of the same or any part thereof, [and that notwithstanding that any of the sd trustees or a sole trustee may be entitled to or interested in any of the other parts or shares of or in the same,] (*f*) and to give or receive money for equality of partition, and to make any such partition upon such terms and conditions as they or he shall think proper, and for the purposes aforesd or any of them, to execute and do all such assurances and things as they or he shall think fit, and the hereditaments which shall on any such partition be taken in severalty by the sd trustees or trustee, and the rents and profits thereof respectively shall be held upon and subject to such trusts, powers, and provisions as shall be subsisting and capable of taking effect by virtue of these presents concerning the sd part or share, parts or shares, hereby settled, and the rents and profits thereof respectively: PROVIDED ALWAYS and it is hereby agreed that any moneys agreed to be paid by the sd trustees or trustee for equality of partition may be paid out of any moneys in their or his hands, arising from a sale under the trusts hereinbefore contained, or settled upon the same trusts as the moneys so arising, or may be charged upon or raised by mortgage of the hereditaments taken in severalty as aforesd; AND ANY MONEYS received by the sd trustees or trustee for equality of partition shall be held upon the same

(*f*) This addition is desirable, as it often happens, owing to relations being appointed trustees, that the trustees of a settlement comprising an undivided share are interested in the other shares.

trusts as if the same had arisen from a sale under the trusts aforesd.

Trusts of rents and profits of real estate conveyed in trust for sale until sold.

LI. PROVIDED ALWAYS, and it is hereby agreed and declared that until all the sd premises assured (*g*) by the hereinbefore recited indre of even date herewith, *the conveyance in trust for sale*, [*or*, hereinbefore assured (*g*),] shall have been sold, the sd, *trustees*, their heirs, [*in case of leaseholds say*, exors, admors,] and assigns, shall pay and apply the net rents and profits of the same premises, or of the unsold part thereof for the time being, to the person or persons, and for the purposes to and for which the income of the investments hereinbefore directed to be made of the net moneys to arise from the sale thereof would be payable or applicable under the trusts hereinbefore contained, if such sale and investment were actually made.

Power to invest in purchase of land, with ancillary clauses.

LII. PROVIDED ALWAYS, and it is hereby agreed and declared, that it shall be lawful for the sd trustees or trustee, during the lives or life of the sd, *husband*, and, *wife*, or the survivor of them, at their, his, or her request in writing, to invest any moneys arising from the sale or conversion (which the sd trustees or trustee are hereby authorised to make for such purpose) of any investments of the sd trust premises, or any other principal moneys subject to the trusts of these presents, in the purchase of any manors, messuages, lands, or hereditaments, in England or Wales [or Ireland], of freehold, copyhold, or customary tenure, or held for any term of years of which not less than [60] years shall be unexpired at the time of such purchase, or in the enfranchisement of any copyhold or customaryhold hereditaments purchased under the present power: And that all such hereditaments shall be assured to the sd trustees or trustee, their or his heirs, exors, admors, and assigns, according to the tenure thereof, UPON TRUST that the sd trustees or trustee shall during the lives or life of the sd, *husband*, and, *wife*, or the survivor of them, at their, his, or her request in writing, and after the decease of such survivor, at the discretion of

(*g*) See last page, note (*f*).

the sd trustees or trustee, sell such hereditaments, either together or in parcels, and either by public auction or private contract, and subject to such conditions as they or he shall think fit, with power to buy in or rescind, or vary, any contract for sale, and to re-sell without being responsible for loss occasioned thereby, and for the purposes aforesd, or any of them, to execute and do all such assurances and things as they or he shall think fit: AND UPON FURTHER TRUST that the sd trustees or trustee shall stand possessed of the net moneys to arise from every such sale, after payment of the costs thereof, upon the same trusts, and with and subject to the same powers and provisions, including the sd power of purchasing hereditaments, as the money laid out in the purchase of the hereditaments so sold would have been subject to if the same had not been so laid out: AND IN THE MEANTIME and until all the sd purchased hereditaments shall be sold, the sd trustees or trustee shall have power to manage or superintend the management of the same premises, and to make allowances to and arrangements with tenants and others, and to accept surrenders of leases or tenancies: AND to demise all or any part of the same premises for any term of years not exceeding 21 years to take effect in possession, or within six calendar months from the date of the demise, at rack-rent, but so that in case any lease shall be granted on the surrender of a then existing lease or tenancy, the value of the interest so surrendered may be taken into account in fixing the rent and terms of the new lease (*b*): AND IN THE MEANTIME, and until all the sd purchased hereditaments shall be sold, the sd trustees or trustee shall pay and apply the rents and profits thereof to the person or persons, for the purposes, and in the manner to whom and for and in which the income of the trust premises applied in the purchase of the sd hereditaments would have been applicable if such

(*b*) If the purchase of land is in actual contemplation, it may be proper to insert more detailed and special powers of management, leasing, &c., according to the probable requirements of the case, as in forms XLIV to XLVII.

purchase had not been made, it being the intention of the parties hereto that the sd purchased hereditaments shall be considered as money, and shall be subject in all respects to the same trusts as the money laid out in the purchase thereof would have been subject if such purchase had not been made.

Power to purchase a house. Short form.

LIII. PROVIDED ALWAYS and it is hereby agreed and declared that the sd trustees or trustee shall at any time at the request in writing of the sd, *husband*, and, *wife*, or the survivor of them, lay out any sum not exceeding £——, arising from the sale (which the sd trustees or trustee are hereby authorized to effect), of any part of the sd trust premises, in the purchase of a messuage with suitable outbuildings and other appurtenances, and with or without gardens, pleasure grounds and land to be held therewith, as a residence for the sd, *husband*, and, *wife*, or the survivor of them, such messuage and premises to be situate in England or Wales, and to be either freehold, or copyhold, or leasehold held for a term of which not less than [60] years shall be unexpired at the time of purchase, and to be assured to the sd trustees or trustee, their or his heirs, exors, admors, or assigns, as the case may require, UPON TRUST, during, &c., *trust for sale and trusts of proceeds as in preceding form:* AND the sd trustees or trustee shall until such sale permit the sd, *husband*, and, *wife*, or the survivor of them, to occupy such messuage and premises, but with power to the sd trustees or trustee at such request or discretion as aforesd, to demise the same or any part thereof for any term not exceeding twenty-one years, to take effect in possession or within six calendar months from the date of the demise at rack-rent, the rent received under any such lease to be paid or applied in the same manner as the income arising from the proceeds of the sale of the sd messuage and premises would be payable or applicable if the same were sold.

Agreement to settle wife's after-acquired property.

LIV. AND IT IS HEREBY AGREED AND DECLARED that if the sd, *wife*, shall at the time of the sd intended marriage be, or if at any time during the sd intended coverture, she, or

the sd, *husband*, in her right shall become seised, possessed, or entitled, of or to any real or personal property (other than the property hereby specifically settled), for any estate or interest whatsoever in possession, reversion, remainder, or expectancy (except property of a less value than £—— vesting in possession before or during the sd intended coverture at the same time and from the same source, and except moveable chattels or effects of household, domestic, or personal use or ornament, all of which excepted property it is hereby declared shall belong to the sd, *wife*, for her separate use, independently of the sd, *husband*, [and except also an annuity or annuities or other estate or interest for the life of the sd, *wife*, or for any term or period determinable on her death, which it is hereby declared shall belong to the sd, *wife*, for her separate use independently of the sd husband, and so that she shall not have power to anticipate the same (*a*)]), then and as often as the same shall happen (*b*) the sd, *husband*, and, *wife*, and all other necessary parties shall forthwith at the expense of the trust estate assure or transfer such real and personal property to the sd trustees or trustee, their or his heirs, exors, admors, and assigns respectively, as the case may require, upon trust that the sd trustees or trustee shall, with the consent in writing of

(*a*) If the wife takes the first life interest in her fortune, insert the words here bracketed. If not, these words will be omitted, and the words in subsequent brackets relative to her life interests will be inserted. Property settled to the wife's separate use is sometimes also excepted. In that case add here, "and except also any property which shall be settled to the separate use of the said, *wife*."

(*b*) Where brevity is desired, the following may be substituted for the rest of this form, to come in here: "all such real and personal property, except as aforesd, shall, at the cost of the trust estate, be forthwith assured or transferred to the sd trustees or trustee, upon trusts as nearly corresponding with the trusts hereby declared of the sd —— hereby settled as may be, and so that such real property shall be impressed with a trust for conversion into money, and be settled as personal estate." Add proviso for protection of trustees as in full form.

the sd, *husband*, and, *wife*, or the survivor of them, and after the decease of such survivor at the discretion of the sd trustees or trustee, (but as to reversionary property not until it falls into possession, unless it shall appear to the sd trustees or trustee that an earlier sale would be beneficial), sell, call in, and convert into money such part of the sd property as shall not consist of money, [or of an annuity or annuities or other estate or interest for the life of the sd, *wife*, or for any term or period determinable on her death,] AND SHALL stand possessed of the moneys to arise from such sale, calling in, and conversion, and of such part of the sd property as shall consist of money, and of the investments of such moneys respectively, and of the income of the same several moneys and investments respectively, and of the net income of the sd real and personal property until the sale, conversion, and calling in of the same respectively, upon the trusts, and with and subject to the powers and provisions hereinbefore declared and contained concerning the moneys to arise from the sale of the sd sum of £—— Bank Annuities hereby settled, *or*, "the sale, calling in, and conversion of the sd —— and premises hereby settled," *or as the case may be*, and the investments representing the same, and the income thereof respectively, [*where any annual or gross sum is payable or raisable out of the wife's fortune, say*, "but not so as to

(*c*) If all the property previously settled is the husband's, and the trusts are in the usual form giving him the first life interest and the ultimate reversion in default of issue, the trust of the wife's after-acquired property may be declared by reference, as in the text, with the following variation :— "Save and except that the sd, *wife*, shall take the first life interest for her separate use without power of anticipation in the sd trust premises, the trusts of which are now being declared, with remainder to the sd, *husband*, in case he shall survive her, during his life, and that in case there shall be no child of the sd intended marriage, who, being a son, shall attain the age of twenty-one years, or, being a daughter, shall attain that age or marry, then subject and without prejudice to the trusts and powers hereinbefore de-

increase the sd annuity or sum of £——](*c*): [AND UPON TRUST that the sd trustees or trustee shall pay and apply any [such] annuity or annuities or other estate or interest for the life of the sd, *wife*, or for any term or period determinable on her death as aforesd , to the persons for the purposes and in the manner to whom for and in which the income of the sd other or future acquired property of the sd, *wife*, the trusts whereof are lastly hereinbefore declared would for the time being be payable or applicable :] PROVIDED ALWAYS that the sd trustees or trustee shall not

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clared and contained, and to every exercise of such powers, the same trust premises shall be held IN TRUST, &c.," *continue trusts of wife's fortune*, p. 1061, *form* XXX. The trusts are sometimes varied so as to make provision for the wife marrying again. The following are alternative variations for this purpose to be introduced at this point, but it is more usual to provide for this by a separate clause. See the forms LVII. to LX. below. "Save only and except that in substitution for the aforesd trusts and powers for the benefit of the child, children, and other issue of the sd intended marriage, there shall be corresponding provisions for the child, children, and other issue of the sd, *wife*, by her sd intended, or any subsequent marriage," or, "Save only and except that in the event of the sd, *wife*, surviving the sd, *husband*, and marrying again, it shall be lawful for her by any deed or deeds executed in contemplation of such subsequent marriage, or by will, or codicil, executed after such subsequent marriage, to direct that the income of the sd other, or future acquired property of the sd, *wife*, hereinbefore agreed to be settled, or of the trust premises representing the same, shall be paid to her aftertaken husband, in case he shall survive her, during his life, or any less period, and by the same, or any other deed or deeds, will, or codicil, to appoint and declare any trusts concerning any part or parts not exceeding in value at the time of such appointment taking effect one moiety of the capital of such last mentioned property and premises in favour of the child, children, or issue, of such future marriage."

be accountable or liable in respect of any real or personal estate which may become subject to the covenant or provision lastly hereinbefore contained, unless or until the same shall have been actually assured, paid, or transferred to them or him, nor for omitting to take proceedings to get in the same real or personal estate, or any part thereof.

Trust of wife's after-acquired property for her separate use.

LV. AND IT IS HEREBY agreed and declared, &c., *as in form* LIV. *down to*, "remainder or expectancy," then and so often as the same shall happen, the sd, *husband*, and, *wife*, and all other necessary parties, shall forthwith, at the expense of the separate estate of the sd, *wife*, assure such real or personal property unto, or otherwise cause the same to be vested in, the sd trustees or trustee, their or his heirs, exors, admors, and assigns respectively, as the case may require, upon trust for the sd, *wife*, her heirs, exors, admors, and assigns, according to the nature thereof, for her separate use, independently of the sd husband, and so that she shall have full power to dispose of and deal with as well the income as the corpus or principal of all the same real and personal estate in the same manner, in all respects, as if she were sole and unmarried. (*e*)

Power to wife to dispose of savings of separate estate (*f*).

LVI. AND IT IS HEREBY agreed that the sd, *wife*, shall have power to dispose of any moneys, stocks, funds, shares, securities, or other property constituting, arising from, or representing her savings out of her separate income, or any other part or parts of her separate estate, in such manner as she shall think proper, without any control or interference whatsoever on the part of the sd, *husband*.

Power to survivor of husband and wife to settle a moiety of the trust funds settled on his, or her, behalf, on a future marriage. Variations

LVII. PROVIDED ALWAYS, and it is hereby agreed and declared, that [if there shall be not more than —— children of the sd intended marriage, who, being sons, or a son, shall

(*e*) This clause would enable the wife to dispose of the property by act inter vivos, or by will, without her husband's concurrence (except as regards any legal estate vested in him), as if she were a feme sole. See *Taylor* v. *Meads*, 4 D. J. & S. 597.

(*f*) This would be her right without express provision (see Davidson, vol. iii., p. 104, 3rd ed.), but this clause is sometimes inserted.

attain the age of twenty-one years, or, being daughters or a daughter, shall attain that age or marry], it shall be lawful for the survivor of them, the sd, *husband*, and, *wife*, at any time or times after the death of the other of them, and either in contemplation of or after any future marriage of such survivor, by any deed or deeds, revocable or irrevocable, or by will or codicil, to direct or appoint that one moiety [such share as is hereinafter mentioned], or any less part of the trust funds and property hereinbefore settled on the part of such survivor [inclusive, in the case of the sd, *wife*, of any property becoming settled by virtue of the agreement hereinbefore contained for the settlement of her other or future acquired property], shall from and after the decease of the sd survivor either remain vested in the sd trustees or trustee, or be transferred to any other persons or person, upon such trusts as shall be declared by such appointment for the benefit of the after-taken husband or wife of such survivor, and the issue, whether children or more remote, of such survivor by any such after-taken husband or wife, such issue to be born and take vested interests within twenty-one years after the death of such survivor [but so that such after-taken husband or wife shall not take any interest exceeding a life interest] : [PROVIDED ALWAYS, and it is hereby agreed and declared that the share of the said trust funds and property to be appointed under the power lastly hereinbefore contained shall not exceed the proportion thereof [the value] hereinafter mentioned, that is to say, if there shall be three or more children of the now-intended marriage, who, being sons or a son, shall attain the age of twenty-one years, or being daughters or a daughter shall attain that age or marry, one equal fourth part thereof [the sum of £——], and if there shall be only two such children one equal third part thereof [the sum of £——] , and if there shall be only one such child a moiety thereof [the sum of £——]] : PROVIDED ALWAYS, and it is hereby agreed and declared that any such appointment as last aforesd may be made while it shall be uncertain whether [or to what extent], the same will be capable of taking

where the amount to be settled depends on the number of children of the present marriage.

effect: PROVIDED ALSO that subject and without prejudice to any such appointment as last aforesd, the trust premises of which any such appointment shall be made shall remain and be held upon such of the trusts, and with and subject to such of the powers and provisions hereinbefore declared and contained of and concerning the same as shall be subsisting and capable of taking effect.

Power to wife to appoint part of trust funds on a second marriage. (*a*)

LVIII. PROVIDED ALWAYS, and it is hereby agreed and declared that if the sd, *wife*, shall survive the sd, *husband*, and marry again, then and in such case it shall be lawful for her, either before or after any such subsequent marriage, by any deed or deeds, revocable or irrevocable, or by will or codicil, to appoint that any part of the trust funds and property hereby settled on her part [inclusive of any property becoming settled by virtue of the agreement hereinbefore contained for the settlement of her other and future acquired property] not bearing a greater proportion to the residue of the same trust funds and property, than the number of children of any subsequent marriage of the sd, *wife*, who being a son or sons shall attain the age of twenty-one years, or being a

(*a*) Where more than one of the forms, LVII., LVIII., LIX., and LX., are used, insert the following proviso, "Provided always, and it is hereby agreed and declared, that if by the effect of any appointments made under more than one of the powers hereinbefore contained for enabling the sd, *wife*, to withdraw part of the sd trust premises from this present settlement, or to make appointments in favour of a future husband or her issue by him, more than [one moiety] of the capital or income of the trust funds or premises hereby settled on the part of the sd, *wife* [inclusive of any property becoming settled by virtue of the agreement hereinbefore contained for the settlement of her other and after acquired property], would but for this present proviso become vested in or payable to any person or persons other than the issue of the sd intended marriage, the appointments so made shall be void for such excess, and shall as between themselves have priority according to their respective dates."

daughter or daughters shall attain that age or marry, shall bear to the number of children of the now intended marriage, who being a son or sons shall attain the age of twenty-one years, or being a daughter or daughters shall attain that age or marry, shall from and after the decease of the sd, *wife*, either remain vested in the sd trustees or trustee or be transferred to any other persons or person in trust as to all or any part of the income thereof for the after-taken husband of the sd, *wife*, in case he shall survive her during his life, or any less period, and subject to any conditions or restrictions which she may think fit, and subject to the interest (if any) so given to such after-taken husband in trust for all or any of the children or remoter issue of the sd, *wife*, by any such subsequent marriage, such remoter issue to be born, and take vested interests in the lifetime of the sd, *wife*, or within twenty-one years after her decease, at such ages or times, age or time (not being earlier as to any object of this power than his or her age of twenty-one years or day of marriage), in such shares if more than one, and in such manner as she, the sd, *wife*, shall by such appointment direct, *Add the two provisoes at the end of the last form.*

General power to wife to withdraw part of funds from settlement, if no child or only one. (*a*)

LIX. PROVIDED ALWAYS, and it is hereby agreed and declared, that in case the sd, *wife*, shall survive the sd, *husband*, and there shall be not more than one child of the sd intended marriage, or not more than one such child who shall attain a vested interest in the sd trust premises under the trusts hereinbefore declared, it shall be lawful for the sd, *wife*, at any time after the decease of the sd, *husband*, but subject and without prejudice to any irrevocable appointment made under the power [either of the powers] hereinbefore contained of making appointments in favour of the issue of the sd intended marriage, by any deed or deeds, revocable or irrevocable, or by will or codicil, to appoint any part of the sd trust funds and property hereby settled on her part [inclusive of any property becoming settled by virtue of the agreement hereinbefore contained for the settlement of her other and future acquired property], not exceeding one moiety

thereof, to be transferred to any person or persons whomsoever, and in such manner, and upon such trusts, and for such purposes in all respects as the sd, *wife*, shall think fit (*b*) : *Add the two provisoes at the end of form* LVII.

Power to a woman to appoint life interest to surviving husband (*a*).

LX. PROVIDED ALWAYS, and it is hereby agreed and declared, that notwithstanding anything hereinbefore contained, it shall be lawful for the sd, *wife*, [by any deed executed prior to, and in contemplation of any marriage, or] by will or codicil, to appoint unto or for the benefit of any husband of hers who may survive her, an interest for the life of such husband, or any less interest in the sd trust funds and property hereby settled on her part [inclusive of any property becoming settled by virtue of the agreement hereinbefore contained for the settlement of her other and future acquired property], or in any part thereof, to commence from the decease of the sd, *wife*, and that in the event of any such appointment being made, the interest in the sd trust premises which shall be so appointed unto or for the benefit of such surviving husband, shall take effect in precedence of and priority over the trusts and provisions hereinbefore declared and contained of and concerning the sd trust premises after the decease of the sd, *wife*.

Power to trustees to relinquish preferential right to take stock in favour of tenant for life.

LXI. PROVIDED ALWAYS, and it is hereby agreed and declared, that in case any preferential right to take or subscribe for any new or other shares or stock in any railway or other company shall be offered to the sd trustees or trustee, as holding any shares or stock in such company for the time being subject to the trusts of these presents, it shall be lawful for the sd trustees or trustee, in their or his discretion, to renounce or relinquish the benefit of such preferential right either absolutely, or in favour of the person for the time being entitled to the income of the sd trust premises, to the intent that such person may have the benefit thereof, or otherwise to sub-

(*b*) This may be varied according to the number of children, as in form LVII.

scribe for such new or other shares or stock, or any part thereof, and to dispose of, or transfer the same, or the title thereto, and every premium or profit arising therefrom shall be held and applied by the sd trustees or trustee as if the same were income arising from the sd trust premises.

Provision for raising costs of settlement.

LXII. PROVIDED ALWAYS, and it is hereby agreed and declared, that the sd trustees or trustee shall with all convenient speed raise by the sale of a sufficient part of the sd ——, and pay the costs and expenses of the negotiation, preparation, and execution by all parties of these presents [and of the indre of even date herewith, and the deed poll, bearing date the day before the date hereof, hereinbefore respectively recited or referred to].

Clause putting infant wife to her election to confirm settlement.

LXIII. PROVIDED ALWAYS and it is hereby agreed and declared [and the sd, *husband*, doth hereby for himself, his heirs, exors, and admors, covenant with the sd, *trustees*, their exors, admors, and assigns,] that the sd, *wife*, shall upon attaining the age of twenty-one years, or at any time thereafter upon the request in writing of the sd trustees or trustee, or any person interested in the sd trust premises, execute and do, at the expense of the trust estate, all such instruments, acts, and things, as may be necessary or proper for effectually confirming the settlement intended to be hereby made, and vesting in or transferring to the sd trustees or trustee the sd —— and premises intended to be hereby settled, or such part thereof as shall not have been so paid or transferred, and in the event of the wilful refusal or neglect of the sd, *wife*, so to do upon such request as aforesd, she shall thenceforth be deprived of all benefit hereunder, and the income of the sd trust premises shall during the remainder of her life be held upon the trusts and for the purposes upon and for which the same would for the time being be held if she were then dead.

Power for trustees to apportion blended.

LXIV. PROVIDED ALWAYS, and it is hereby agreed and declared, that it shall be lawful for the sd trustees or trustee to determine whether any money shall for the

trust funds, &c.

purposes of these presents be considered as capital or income, and out of what part of the sd trust premises any expenses or outgoings shall be borne, and also to apportion as they or he shall think fit any funds subject to different trusts which may have become blended: And to determine all questions and matters of doubt arising in the execution of the trusts of these presents, and that every such determination, whether made upon a question actually raised or implied in the acts and proceedings of the sd trustees or trustee, shall be conclusive, and bind all persons interested under these presents: And the sd trustees or trustee shall also have full power to compromise, or refer to arbitration, any actions, proceedings, disputes, claims, or demands, and to settle all accounts relating to the trust premises, and to execute releases, and to do all other things proper for any such purpose, without being responsible for loss occasioned thereby.

To determine questions.

To compromise, settle accounts, &c.

Power for trustees to accept stocks, &c., in satisfaction of settled share.

lxv. Provided always, and it is hereby agreed and declared, that it shall be lawful for the sd trustees or trustee, in their or his discretion, to receive any stocks, funds, shares, or securities, of any description hereinbefore authorised as investments, in satisfaction wholly or in part, and at such valuation as may be agreed upon, of the part or share hereinbefore assigned, or any part thereof: And that the investments so received, and the income thereof, shall be held upon the same trusts as if the same had arisen from investments made under the powers hereinbefore contained of money received in respect of the part or share hereinbefore assigned.

Trustees' receipt clause. (*d*)

lxvi. Provided always, and it is hereby agreed and declared that the receipt of the sd trustees or trustee for the

(*d*) The receipt clause, and the power to appoint new trustees, and the trustees indemnity and reimbursement clauses, may now be usually omitted in reliance on recent enactments (see as to the receipt clause, 22 & 23 Vic. c. 35, s. 23, 23 & 24 Vic. c. 145, s. 29, as to the power to appoint new trustees, the last mentioned act, s. 27, and as to the indemnity and reimbursement clauses, the first mentioned act, s. 31), and a short clause substituted, see form lxix. But it may occasionally be proper to insert the ful-

purchase moneys of any property hereby directed or authorised to be sold, or for any other moneys, stocks, funds, shares, securities, or investments, paid, delivered, or transferred to them or him by virtue of these presents, or in the execution of the trusts or powers hereof, shall effectually discharge the person or persons paying, delivering, or transferring the same therefrom, and from being bound to see to the application, or being answerable for the loss or misapplication thereof.

Power to appoint new trustees. (*d*)

LXVII. PROVIDED ALWAYS, and it is hereby agreed and declared that if, and so often as, the sd trustees hereby constituted, or any of them, or any trustee or trustees appointed under this present power, or by a court having jurisdiction in that behalf, shall die or reside abroad, or desire to be discharged, or refuse or become unfit or incapable to act in the trusts of these presents, it shall be lawful for the sd, *husband*, and, *wife*, or the survivor of them, and after the death of such survivor for the surviving or continuing trustees or trustee for the time being (and for this purpose any retiring or refusing trustee shall, if willing to act in the exercise of this power, be considered a continuing trustee), or for the acting exors or exor, or admors or admor, of the last surviving and continuing trustee, to appoint a new trustee or trustees in the place of the trustee or trustees so dying or residing abroad, or desiring to be discharged, or refusing or becoming unfit or incapable to act as aforesd: And upon every such appointment the number of trustees may be increased or diminished, but not to less than two, and upon every such appointment the trust property shall, as soon as circumstances will admit, be transferred so as to be vested in the trustees or trustee for the time being, but every new trustee may, as well before as after the trust property shall have been so transferred, execute all the trusts and powers of these presents in the same manner as if he had been hereby constituted a trustee.

clauses when the trust property is situate abroad, where there may be no enactments corresponding to those above referred to.

Trustees' indemnity and reimbursement clauses. (*e*)

LXVIII. PROVIDED ALWAYS, and it is hereby agreed and declared that the trustees for the time being of these presents shall be respectively chargeable only for such moneys and securities as they shall respectively actually receive, notwithstanding their respectively signing any receipt for the sake of conformity, and shall respectively be answerable and responsible only for their own respective acts, receipts, omissions, neglects, and defaults, and not for those of each other, nor for any banker, broker, auctioneer, or other person with whom or into whose hands any trust moneys or securities shall be deposited or come, nor for dispensing wholly or partially with the investigation or production of the lessor's title [on the purchase (*f*) or] on lending money on the security of leaseholds, nor for otherwise [purchasing or] lending on the security of hereditaments with less than a marketable title, nor for the insufficiency in title or deficiency in value of any investments, nor for any other loss, unless the same shall happen through their own wilful default respectively: And also that the sd trustees or trustee for the time being may reimburse themselves or himself, or pay and discharge out of the trust premises all expenses incurred in or about the execution of the trusts or powers of these presents [or of the said indre of even date herewith.]

Clause supplemental to the statutory power of appointing new trustees, and as to indemnity of trustees. (*g*)

LXIX. PROVIDED ALWAYS, and it is hereby agreed and declared that the power of appointing new trustees of these presents [in the place of trustees who may die, or desire to be discharged, or refuse or become unfit or incapable to act (*g*)] shall be vested in the sd, *husband*, and, *wife*, during their joint lives, and the survivor of them during his or her life, and after the death of such survivor in the surviving or continuing trustees or trustee for the time being, or the acting exors or exor, admors or admor, of the last surviving

(*e*) See above, p. 1088, note (*d*).

(*f*) In the case of the *purchase* of leaseholds, this is provided for by the Vendor and Purchaser Act, 1874, s. 2; but it is obviously proper to express it in this case.

(*g*) The words in brackets might be omitted.

and continuing trustee, or the last retiring trustee or trustees, and on every such appointment the number of trustees may be increased or diminished, but not to less than two: And in addition to the ordinary indemnity given by law to trustees, the sd trustees or trustee may dispense wholly or partially with the investigation or production of the lessor's title [on the purchase, (*f*) or] on lending money on the security of leaseholds, and may otherwise [purchase or] lend on the security of any hereditaments with less than a marketable title, without being liable for any loss occasioned thereby.

Provision supplemental to statutory power of appointing new trustees where each settlor is to supply the place of the trustee nominated by him.

LXX. AND IT IS HEREBY AGREED AND DECLARED that the power of appointing a new trustee or trustees, in the place of the sd M., or of any trustee or trustees substituted for him, shall be vested in the sd A. during his life, and after his death in the surviving or continuing trustees or trustee, *&c., as in last form,* and that the power of appointing a new trustee or trustees in the place of the sd N., or of any trustee or trustees substituted for him, shall be vested in the sd B. during his life, and after his death in the surviving or continuing trustees or trustee, &c, and on every such appointment the number of trustees may be increased or diminished, but not to less than two: And in addition, &c., *as in the last form.*

Power to trustees, being solicitors or professional men, to charge for business done.

LXXI. AND IT IS HEREBY AGREED AND DECLARED that every trustee under these presents being a solicitor [or engaged in any other profession or business], shall be entitled to make and receive all such charges and emoluments for business done by him in relation to the execution of the trusts of these presents, as he would have been entitled to make and receive in respect of such business if he had not been a trustee.

Power of revocation of settlement. Variation where consent of trustees is required.

LXXII. PROVIDED ALWAYS and it is hereby agreed and declared that it shall be lawful for the sd, *settlor,* at any time or times hereafter, [with the consent in writing of the sd trustees or trustee, which consent they or he shall have an absolute discretion to give or withhold, without incurring any responsibility in that behalf,] by any deed or deeds

revocable or irrevocable, or by will or codicil expressly referring to this power (*a*), wholly or partially to revoke the [uses] (*b*) trusts, powers, and provisions herein declared and contained of and concerning the —— and premises hereby settled and the [rents, profits, and] (*b*) income thereof, and to declare such new or other [uses and] (*b*) trusts of and concerning the same, or any part or parts thereof, for the benefit of himself the sd, *settlor*, his [heirs] (*b*) exors and admors, or any other person or persons as he may think fit.

Declaration as to devolution of trustees' powers.

LXXIII. PROVIDED ALWAYS (*c*) and it is hereby agreed and declared, that all the powers and authorities hereinbefore given to the sd, *trustees*, whether by name or otherwise, shall devolve upon, and be exerciseable by the survivors and survivor of them, and the [heirs, or, according to the nature of the property, the] exors or admors of such survivor, and the trustees or trustee for the time being of these presents.

(*a*) These words are desirable, although a will containing a general devise and bequest not referring to the power would not operate as an execution of such a power. See 3 Davidson, Prec., 3rd ed. 698.

(*b*) The words bracketed will be appropriate in the case of real estate, although settled by means of a trust for sale.

(*c*) The importance of indicating clearly the devolution of the powers of the trustees leads to the constant recurrence in settlements of the form, "the sd C., D., and E., and the survivors and survivor of them, and the heirs, exors, or admors, of such survivor," or similar expressions. This may usually be obviated in the mode indicated above, p. 1048, note (*f*); but it may sometimes be found convenient to use the above interpretation clause, the words, "the sd trustees," being substituted for the above lengthy form.

PRECEDENTS.

I.

SETTLEMENT, *on Marriage, of* RAILWAY SHARES *belonging to* HUSBAND, *and* CONSOLS *and* BONDS (PASSING *by* DELIVERY) *of a Foreign Government belonging to* WIFE, EACH *taking the* FIRST LIFE INTEREST *in his or her* OWN PROPERTY. AGREEMENT *for* SETTLEMENT *of Wife's* AFTER-ACQUIRED PROPERTY. PREC. I.

Parties, A., *husband*, 1; B., *wife*, 2; C., D., and E., *trustees*, 3. *Recite intended marriage*, p. 1039; *Agreement for settlement and transfer of the railway shares belonging to A. (giving the particulars if convenient in first schedule) according to* p. 1042, *form* VIII., *or, if preferred*, p. 1039, *form* II., *and* p. 1042, *form* X.: AND WHAS pursuant to a further agreement made upon the treaty for the sd intended marriage, the sum of £—— £3 per cent. Consolidated Bank Annuities and —— bonds of the —— Government for £—— sterling each, *or*, "the Bank Annuities and bonds, the particulars whereof are specified in the second schedule hereto," belonging to the sd B., have been respectively transferred into the names of and delivered to the sd C., D., and E., to the intent that the same shall be held in trust, *for B. till marriage, &c., as at* p. 1039, *form* II., [*or, if preferred, recite agreement as at* p. 1039, *form* II., *and transfer as at* p. 1042, *form* X.]; *Agreement for settlement of B.'s after-acquired property*, p. 1044; *General agreement*, p. 1045: NOW THIS INDRE WITNESSETH that, in pursuance of the sd agreement and in consideration of the sd intended marriage, it is hereby agreed and declared that

Recitals.

Marriage.

Agreement for settlement.

Transfer of stock, &c.

Witnesseth.

PREC. I.

the sd C., D., and E., their exors, admors, and assigns, shall, after the sd intended marriage, stand possessed of the sd shares, Bank Annuities, and bonds hereinbefore stated to have been transferred and delivered respectively to the sd C., D., and E., UPON TRUST that the sd C., D., and E., &c., *continue trust for investment*, p. 1048, *form* III., *and* IV., V., *or* VI.: AND DURING the joint lives of the sd A. and B., shall pay the income of the sd shares and the investments representing the same to the sd A. and his assigns, and shall pay the income of the sd Bank Annuities and bonds, and the investments representing the same respectively, to the sd B. for her separate use, &c., *as at* p. 1053, *form* IX.; *Trust to pay income*, "of the whole of the sd trust premises," *to the survivor for life*, p. 1053, *form* XIII.: AND AFTER the death of the survivor of the sd A. and B., shall stand possessed of the whole of the sd trust premises and the income thereof IN TRUST, *for children or remoter issue of marriage as A. and B. or survivor appoint*, p. 1057, *form* XXI., *or* p. 1058, *form* XXII., *in default of appointment for children of marriage at twenty-one, &c.*, p. 1058, *form* XXIV.; *Hotchpot clause*, p. 1059; *Advancement*, p. 1060; *Maintenance*, p. 1060; *Accumulation*, p. 1060; *Ultimate trust of A.'s and B.'s fortune*, p. 1061; *Agreement to settle other or after-acquired property of wife*, p. 1078, *form* LIV., *or* p. 1082, *form* LV.: (*d*) *Power to trustees to apportion trust funds and determine questions*, p. 1087; *Short trustee clause*, p. 1090, *form* LXIX. *If either of the trustees is a solicitor or professional man, add, Power to charge for business done*, p. 1091, *form* LXXI.

Declaration of trusts.

Investment.

Income.

Capital.

IN WITNESS, &c.

[*Two Schedules.*]

(*d*) Add here, if desired, a power to either party to make a settlement on a future marriage, see p. 1082 *et seq.*

II.

SETTLEMENT, *on Marriage, of* POLICY *of* ASSURANCE *effected on* LIFE *of* HUSBAND *in his* OWN NAME. VARIATIONS, *where it is effected in the* NAMES *of the* TRUSTEES, *and for* SEVERAL POLICIES. PREC. II.

Parties, A., *husband*, 1; B., *wife*, 2; C., D., and E., *trustees*, 3. *Recite intended marriage*, p. 1039; *Title to and agreement for settlement of policy or policies*, p. 1042, *form* XI. *or* XII.: NOW THIS INDRE WITNESSETH that in pursuance of the sd agreement and in consideration of the sd intended marriage, [(*e*) *assignment by A. with approbation of B., of policy or policies to C., D., and E., in trust for A. till the marriage, &c.*, p. 1045, *form* I.; *Covenant by A. with C., D., and E.*, their exors, admors, and assigns, that, notwithstanding anything by him the sd A. done, omitted, or knowingly suffered, the sd policy is [respective policies are] now valid and subsisting: AND THAT he the sd A., &c., *continue covenant for further assurance*, p. 1047, *form* II.: AND] IT IS HEREBY AGREED AND DECLARED that, in case the sd intended marriage shall take place [the sd C., D., and E., or the survivors or survivor of them, or the exors or admors of such survivor, or other the trustees or trustee for the time being of these presents hereinafter called] the sd trustees or trustee shall, upon the death of the sd A., receive all the moneys assured by or to become payable under the sd policy [respective policies]: AND SHALL, with the consent in writing of the sd B. during her lifetime, and after her death at the discretion of the sd trustees or trustee, invest the same in the names or name [or under the legal control] of the sd trustees or trustee in or upon, &c., *Investments*, p. 1049 *et seq.*, *form* IV., V., *or* VI.: AND SHALL pay the income of the sd policy moneys or the

Recitals.

Witnesseth.

Assignment of

and covenants for title to policy.

Trusts of policy moneys.

Investment.

Income.

(*e*) If the policy is effected in the trustees' names the part in brackets will, of course, be omitted.

PREC. II.

Trusts after death of husband and wife.

investments representing the same to the sd B. during her life: AND AFTER the death of the sd B. shall stand possessed of the sd policy moneys, investments and premises, and the income thereof, IN TRUST, *for issue of marriage as A. and B. or survivor appoint*, p. 1057, *form* XXI., *or* p. 1058, *form* XXII., *in default of appointment for children equally at twenty-one, &c.*, p. 1058, *form* XXIV.; *Hotchpot clause*, p. 1059; *Advancement*, p. 1060; *Maintenance*, p. 1060; *Accumulation*, p. 1060; *Ultimate trust of*, "the sd trust premises," *for A.*, p. 1061; *Covenant by A. to keep up policy*, p. 1062: [PROVIDED ALWAYS and it is hereby agreed and declared that it shall be lawful for the sd trustees or trustee to borrow from any person interested in the sd trust premises, or from any other person or persons, the amount required for payment of the annual premiums or other sums necessary for keeping on foot or restoring the sd policy [respective policies] or any such substituted policy as aforesd, or for effecting any such substituted policy, and to apply the amount so borrowed accordingly, and any sum or sums so borrowed, &c., *continue as at* p. 1063, *form* XXXIII., *omitting the proviso at the end; Option of applying bonuses in diminution of premiums*, p. 1064; *Power to surrender policy, and trust to accumulate proceeds*, p. 1064:] *Proviso protecting trustees in case of lapse of policy*, p. 1065; *Short trustee clause*, p. 1090, *form* LXIX.

Power to trustees to borrow money to keep up policy.

IN WITNESS, &c. (*f*)

III.

PREC. III.

TRANSFER *of* MORTGAGE *of* FREEHOLDS *to* TRUSTEES *of Marriage* SETTLEMENT *of even date.* (*g*)

(*f*) Notice of the settlement must be given to the office, if the policy is effected in the husband's name. See The Policies of Assurance Act, 1867, 30 & 31 Vic., c. 144, and p. 421, note.

(*g*) The transfer is made by a separate deed, in order that the settlement may not become part of the title to the mortgaged estate. See the next Precedent.

PREC. III.

Parties, A., *wife*, 1; B., *husband*, 2; C., D., and E., *trustees*, 3. *Recite mortgage and state of mortgage debt as at* p. 858, *intended marriage*, p. 1039: AND WHAS upon the treaty for the sd intended marriage it was agreed that the sd mortgage debt of £—— and interest, and the securities for the same, should be transferred to the sd C., D., and E., in manner and upon the trusts hereinafter expressed: NOW THIS INDRE WITNESSETH that in pursuance of the sd agreement, &c., *assignment to the trustees of*, "ALL THAT the sd principal sum of £—— secured by the hereinbefore recited indre as aforesd, and the interest now due and henceforth to become due on the same, and the benefit of all securities for the same," *and habendum*, p. 1045, *form* I., *with the variation, where the settlement is effected by a separate deed, inserting after the estate clause the power of attorney*, p. 717: AND THIS INDRE ALSO WITNESSETH that, in further pursuance of the sd agreement, and in consideration of the sd intended marriage, she, the sd A., with the approbation of the sd B., doth hereby, &c., *conveyance of mortgaged property to trustees subject to redemption*, p. 859; *Covenant by A. with trustees that she has not incumbered*, p. 739; *Short trustee clause*, p. 1090, *form* LXIX.

Recitals.

Agreemen for transfer.

Witnesseth.

Assignment of mortgage debt.

Further witnesseth.

Conveyance of mortgaged property.

IN WITNESS, &c. (*a*)

IV.

PREC. IV.

SETTLEMENT, *on Marriage, of a* MORTGAGE *Debt belonging to the Wife, and* REVERSIONARY SHARE *under her Parents'* SETTLEMENT *and an* APPOINTMENT, (*b*) *and of* POLICIES *on the life of the Husband, effected in the* NAMES *of the* TRUSTEES *of the*

(*a*) Notice of the transfer should be given to the mortgagor.

(*b*) The appointment is usually made by a separate deed, which is the more convenient practice and attended with little additional expense. For forms of appointments, see APPOINTMENTS.

PREC. IV.

Settlement. The WIFE *taking the* FIRST LIFE INTEREST. *The Husband's* FATHER COVENANTS *to pay an* ANNUITY. *The Wife's* FATHER COVENANTS *to* MAKE UP *her Reversionary* SHARE *to a* CERTAIN SUM. VARIATIONS, *where the Wife's Interest in the* MORTGAGE *is* EQUITABLE *only, and where a* FIXED SUM *raisable out of the* REVERSION *is settled, and where the* HUSBAND *is a* FOREIGNER. (*c*)

Parties, A., *husband,* (*d*) 1; B., *wife,* (*d*) 2; C., *husband's father,* 3; D., *wife's father,* 4; E., F., and G., *trustees,* 5.

Recitals.

Recite intended marriage, p. 1039; *Title of B. under her father's marriage settlement, and an appointment to,* "one equal —— part or share of the trust funds," &c., *subject to her parent's life interest,* p. 1040, *form* IV.; *Particulars of trust property,* p. 1041, *form* V.; [*If the mortgage is legally vested in B. and is transferred to the trustees by a separate deed, recite the transfer,* p. 1043, *form* XIII.; *If B.'s interest in the mortgage is equitable only, substitute,* "AND WHAS the sd B. is, under or by virtue of, &c., beneficially entitled to

Of title to equitable interest in mortgage.

(*c*) In the absence of a settlement, the rights and obligations imposed by marriage on the husband and wife are those of the matrimonial domicile, *i.e.*, of the place in which the newly married couple intend to establish their home. See Story, Conflict of Laws, ss. 191 to 199; see also the authorities collected, Sirey, Les Codes Annotés, note to Code Napoleon, Art. 1387. The marriage settlement must be interpreted according to the law of the place where it is contracted, (Story, Conflict of Laws, s. 276), or rather, it is submitted, according to the law with reference to which it is evidently framed. A difficulty occurs where the provisions of a marriage settlement, though lawful according to the law according to which it has to be interpreted, are unlawful in the place of the matrimonial domicile. As for example, the usual clauses as to children in an English settlement would be illegal according to French law, Code Napoleon, 1389. It appears from *Van Grutten* v. *Digby*, 31 Beav. 567, that if a marriage is contracted in England between an English woman and a foreigner with the intention that the matrimonial domicile shall be foreign, on the faith of a settlement in the English form, entered into previously to the marriage, relating to property subject to the law and within the jurisdiction of England, the English courts will determine the rights of all persons claiming under it, as if the whole matter were to be regulated by English law.

(*d*) When the intended husband is a foreigner, say, "domiciled in ——."

one equal —— part or share of or in a principal sum of £—— and interest secured by a mortgage of certain freehold and copyhold hereditaments belonging to ——, situate at, &c., which principal sum of £—— and interest, together with the securities for the same, is now legally vested in K. and L.,"] *Agreement for settlement*, p. 1041, *form* VII. *of*, "the sd —— part or share or other share or shares to which the sd B. is now or will upon the sd marriage become entitled of or in the trust funds or property comprised in the sd settlement, (*e*) [*If B.'s interest in the mortgage is equitable only, add*, "and also the sd principal sum of £—— to which the sd B. is entitled as aforesd, and the interest thereon"]; *Title to and agreement for settlement of policies on A.'s life*, p. 1042, *form* XII.; *Agreement that C. should covenant for payment of annuity*, p. 1044, *form* XVI.: AND WHAS it has been further agreed that the sd D. shall enter into the covenant hereinafter contained for making up the amount of the sd reversionary share or interest of the sd B. to the sum of £——; *Agreement as to settlement of B.'s after-acquired property*, p. 1044, *form* XV. (*f*): NOW THIS INDRE WITNESSETH, *assignment by B. of*, "ALL THAT," &c., *the reversionary share under her parents' settlement and appointment*, (*g*) [*If B.'s interest in the mortgage is equitable*

Agreement for settlement.

Agreement as to making up the value of reversionary interest.

Witnesseth.

Assignment.

(*e*) If a fixed sum, raisable out of the reversion, is settled, substitute for the above a recital of agreement for settlement of "the sum of £——, to be raised out of the sd part or share," &c., as in the text, "when the same shall fall into possession." If the balance of the reversion is not to be settled, it will of course be excepted out of the covenant (if any), to settle the wife's other and after-acquired property.

(*f*) When the intended husband is a foreigner, say, "AND WHAS it is the intention of the parties hereto that these presents shall be construed, and that the rights of all persons claiming hereunder shall be regulated by the law of England in the same manner as if the sd A. were now domiciled in England, and as if both the sd A. and B. were to remain henceforth during their respective lives domiciled in England."

(*g*) If a fixed sum, raisable out of the reversion, is settled, substitute an

PREC. IV.

only, add, "AND ALSO all that," &c., *the sum secured on mortgage,*] p. 1045, *form* I., *mutatis mutandis; Covenant by A. and B. for further assurance,* p. 1047, *form* II. AND IT IS HEREBY

Trusts.

AGREED AND DECLARED that the sd E., F., and G., their exors, admors, and assigns, shall, from and after the sd intended marriage, stand possessed of the sd part or share, (*a*) [mortgage debt and interest] and premises hereby assigned [*If the mortgage is transferred by a separate deed, add,* "and the sd mortgage debt of £—— and interest which have been transferred to the sd trustees by the

Investment.

hereinbefore recited indre of even date herewith"]: UPON TRUST that they, the sd trustees or trustee, shall either allow the sd part or share as and when the same shall fall into possession and be received by the sd trustees or trustee, and the sd mortgage debt, or any of them, or any part or parts thereof respectively, to remain, &c., *continue investment clause,* p. 1048, *form* III. *and form* IV., V., *or* VI. : AND SHALL, during the joint lives of the sd A. and B., pay the income of the sd respective trust premises and the investments representing the same respectively (including any interest now accrued but not yet received, on the sd mortgage debt of £——), *to B. for life for her separate use without anticipation, remainder to survivor of A. and B.,* p. 1053, *forms* X. *and* XIII. : AND AFTER the death of the survivor of them the sd A. and B. shall stand possessed of the sd

Trusts during lives of husband and wife.

After the death of husband and wife.

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assignment of "the sum of £——, to be raised out of the sd part or share, &c., as soon as may be after the same part or share and premises shall fall into possession, and to be paid to the sd, *trustees,* their exors, admors, or assigns, without any deduction in respect of succession [legacy] duty, expenses, or otherwise, with interest thereon, at the rate of £—— per cent. per annum, from the day when the sd part or share and premises shall fall into possession until the same sum of £—— shall be raised and paid."

(*a*) In the case mentioned in the last note, say, "the sd sum of £——, and interest:" the alterations in the rest of the Precedent for this case will be obvious.

respective trust premises, and the income thereof, &c., *trusts for issue of marriage*, p. 1057, *form* XXI. (*b*), *or* XXII., *and* p. 1058, *form* XXIV.; *hotchpot, advancement, maintenance, and accumulation clauses*, pp. 1059 *and* 1060. *Ultimate trust of wife's fortune*, p. 1061. (*c*) [*Power to trustees to pay income to wife's bankers*, p. 1057]. *Trusts of policies by reference to the trusts declared of*, "the sd part or share, and premises hereby assigned," p. 1062, *form* XXXI., "except that if there shall be no child of the sd intended marriage, who being a son shall attain the age of twenty-one years, or being a daughter shall attain that age or marry, then, subject and without prejudice to the trusts and powers lastly hereinbefore declared and contained by reference as aforesd, and to every exercise of such powers, the sd trustees or trustee shall stand possessed of the sd policy moneys, and the investments representing the same, and the income thereof, in trust for the sd A., his exors, admors, and assigns, *Insert such of the clauses*, XXXII. *to* XXXVII., *relative to the policies as may be appropriate. Covenant by C. to pay annuity to the trustees and declaration of trust*, p. 1068 (*d*); *Covenant by D. to make up B.'s reversionary*

Trusts of policies.

Covenants.

(*b*) Where the intended husband is a foreigner, say, in the power of appointment, "by will or codicil, executed in such manner as to be valid according to the law of the domicile of such survivor, or by any writing, purporting to be a will or codicil, executed in such a manner that the same would be valid as such according to the law of England if such survivor were, at the time of his or her death, domiciled in England, and, in the case of the sd B., a feme sole." See Story, Conflict of Laws, ch. xi., s. 473.

(*c*) Where the intended husband is a foreigner, the power of appointment by will will be in the form given in the last note, *mutatis mutandis*.

(*d*) Add, if so intended, "but so that if the sd B. shall marry again after the death of the sd A., the same annual sum shall be paid and applied to the persons, for the purposes, and in the manner to, for, and in which the same would be payable or applicable if the sd B. were dead."

PREC. IV.

interest to a certain sum, and declaration of trust, p. 1067; *Agreement to settle B.'s after-acquired property*, p. 1078; *Power to trustees to apportion blended trust funds, determine questions, settle accounts, &c.*, p. 1087; *and to accept stocks, &c., in satisfaction of reversionary share settled by B.*, p. 1088 (*e*): *Clause supplemental to statutory provisions as to appointment and indemnity of trustees*, p. 1090, *form* LXIX. (*f*)

IN WITNESS, &c. (*g*)

(*e*) If it is desired to provide more specifically for reversionary interests, add here, "AND THE sd trustees or trustee shall also have full power to agree or ascertain the value of the share [original or accruing] of the sd B. in the sd premises, held upon the trusts of the sd settlement, *or*, 'will,' or any part or parts thereof: AND TO allow any deductions for duty, expenses, or on any other account whatsoever, which they or he may think fit and reasonable to be allowed (whether such allowance can be legally required or claimed or not): AND SHALL not be bound to insist on the calling in, or conversion, or re-investment, of any portion of the premises held upon the trusts of the sd settlement, *or*, 'will,' or any other property hereby agreed to be brought into settlement, which may not be in an authorised state of investment, according to the trusts of these presents, unless requested so to do in writing by the sd A. and B., or the survivor of them, and shall not be liable for any loss occasioned thereby," [*if an improper investment has been made under the trusts of the prior settlement or will, which it is desired to condone, add*, "AND IT IS HEREBY AGREED AND DECLARED that the present mode of investment of the sd premises held upon the trusts of the sd settlement, *or*, 'will,' as specified in the sd schedule hereto shall be accepted and approved of as a proper mode of investment thereof, although the same may not be authorised by the trusts of such settlement, *or*, 'will'."]

(*f*) Where the intended husband is a foreigner, add, "AND IT IS

(*g*) Notice of the settlement must be given to the trustees of the marriage settlement of the wife's parents; and, if the wife's interest in the mortgage is equitable only, to the persons in whom it is legally vested.

V.

PREC. V.

SETTLEMENT, *on Marriage, of* SHARES *in a* RESIDUARY ESTATE, *to which the Wife is* ENTITLED, *partly in* POSSESSION *and partly in* CONTINGENCY, *and of a sum of* CONSOLS *in* COURT, *to which the husband is* CONTINGENTLY ENTITLED *in* REVERSION. COVENANT *by the Husband for* PAYMENT *of an* ANNUITY CHARGED *on the net* PROFITS *of his* BUSINESS. *Each takes the* FIRST LIFE INTEREST *in his or her* OWN PROPERTY, *the* HUSBAND'S LIFE INTEREST *in his* OWN PROPERTY *being* CHARGED *with* MAINTENANCE *for his Wife and Children. And his* LIFE INTEREST *in the* WIFE'S PROPERTY *being made* DETERMINABLE *on* BANKRUPTCY, *&c.* POWER *to invest in* PURCHASE *of* LAND. POWER *to either party to make a* SETTLEMENT *on a* FUTURE MARRIAGE. POWER *to trustees to obtain a* STOP ORDER. VARIATIONS *where the Husband takes a* PROTECTED LIFE INTEREST *in the Wife's property, and where the* WIFE *being an* INFANT *is put to her* ELECTION *to* CONFIRM *the* SETTLEMENT.

Parties, A., *husband*, 1; B., *wife* [an infant under the age of twenty-one years], 2; C., *wife's father*, 3; D., E., and F., *trustees*, 4. *Recite intended marriage*, p. 1039: AND WHAS the sd A., as one of the six children now living of K., deceased, by his wife L., will, in the event of his surviving the sd L., become entitled under the will of the sd K., which was proved

Recitals.

Husband's title to contingent interest in consols in court.

HEREBY AGREED AND DECLARED by all the parties hereto, and particularly by the sd A., that these presents shall be construed, and that the rights of all persons claiming hereunder shall be regulated, according to the law of England, in the same manner as if the sd A. were now domiciled in England, and as if the sd A. and B. were to remain henceforth during their respective lives domiciled in England."

PREC. V.

on the —— day of —— in the Court, *or*, "Registry," &c., to one equal sixth part or share, or to some other part or share, or to the whole of a sum of £—— Consols now standing to the credit of a cause of M. *v.* N., *add reference to record*, the account of, &c.: AND WHAS the sd A. is carrying on the business of —— in co-partnership with X. and Y. under the firm of ——: AND WHAS the sd B., as one of the children of the sd C., by G. his late wife, is [will upon marriage become] entitled in possession to one equal fourth part or share of the trust funds and property subject to the trusts of an indre dated, &c., and expressed, &c., which now consist of the particulars specified in the schedule hereto, And in the event of the death of her brother Q., under the age of twenty-one years, will become entitled in possession to one equal third part or share of another such fourth part or share, and of the accumulations, if any, of such share, or of so much of the same respectively as shall not have been applied under the trusts of the sd indre of, &c.: AND WHAS, upon the treaty for the sd intended marriage, it was agreed that the sd A. and B. should respectively assign the sd several trust premises to which they are, or may become, respectively entitled as hereinbefore is recited to the sd D., E., and F., upon the trusts and with and subject to the powers and provisions hereinafter declared and contained concerning the same respectively, And it was also agreed that the sd A. should enter into the covenant hereinafter contained for payment of an annuity to be held upon the trusts hereinafter declared, and that such annuity should be collaterally secured in manner hereinafter appearing, and that these presents should contain such other provisions as are hereinafter expressed: NOW THIS INDRE WITNESSETH, *assignment by A. to trustees of his contingent interest in the Consols*, p. 1045, *form* I., *mutatis mutandis*. *Similar assignment by B. of* "ALL THAT one equal fourth part or share to which she is [will upon the sd intended marriage become] entitled as aforesd, AND ALL that one equal third part or share of another fourth part or share, and of the accumulations thereof to

Wife's title to reversionary interest, partly vested and partly contingent.

Agreement for settlement,

And for covenant to pay annuity.

Witnesseth.

Assignment of reversionary interests.

which she is contingently entitled under the trusts of the sd indre of, &c., AND ALL other (if any) the part or share, or parts or shares, to which she is now, or will in any event, become entitled of or in the trust funds and property subject to the trusts of the same indre," p. 1045; *Covenant for further assurance by A.*, p. 1047, *as to*, "the premises first hereinbefore expressed to be hereby assigned," *and by A. and B.*, "as to the premises secondly hereinbefore expressed to be hereby assigned;" AND IT IS HEREBY AGREED and declared that, &c., *Trust for investment* p. 1048. *form* III., *and* IV., V., *or* VI. (*h*); AND SHALL, during the life of the sd A., pay the income of the sd premises first hereinbefore assigned, and the investments representing the same, (which are hereinafter referred to as the fortune of the sd A.) unto the sd A. and his assigns: AND AFTER the death of the sd A. shall pay the income of the fortune of the sd A. to the sd B., if surviving, and her assigns, during her life: AND SHALL, during the life of the sd B., pay the income of the sd premises secondly hereinbefore assigned, and the investments representing the same (which are hereinafter referred to as the fortune of the sd B.) &c., *trust for B. for life, for separate use, without anticipation*, p. 1053, *form* IX.; *And after her death to A. for life, determinable on bankruptcy, &c.*, p. 1054, *form* XVI. [*if the husband is to take a protected life interest add, if so intended*, "but so, nevertheless, that such cesser or determination of the interest of the sd A. shall not affect his right to exercise, or concur in exercising, the several powers

Trusts during lives of husband and wife.

(*h*) If A.'s life interest in B.'s fortune is determinable, but not protected, the provision as to consents to investments should be, "with the consent of the sd A. and B. during their joint lives, and of the survivor of them during his or her life, and after the death of such survivor at the discretion of the sd trustees or trustee (but so that as regards the premises secondly hereinbefore assigned, the consent of the sd A. to an investment or change of investment shall not be required in the event of the determination of the trust hereinafter declared in his favour concerning the same premises)."

PREC. V.

hereby given to him of consenting to investments and changes of investment, and of making appointments in favour of the issue of the sd intended marriage.] *Discretionary trust for application of the income,* " of the fortune of the sd B.," *on husband's bankruptcy, &c., for the benefit of himself and family,* p. 1055, *form* XVII., *or if he is not to take a protected life interest, insert form* XVIII. (*i*) ; AND IT IS HEREBY AGREED AND DECLARED that after the death of the survivor of them the sd A. and B., the sd trustees and trustee shall stand possessed of the fortune of the sd A., and also of the fortune of the sd B., and the income thereof respectively, *Usual trust for issue of marriage, as A. and B. shall appoint, and in default, as the survivor shall appoint,* p. 1057 (*a*) ; *Usual trust for children in default of appointment,* p. 1058 ; *Hotchpot clause,* p. 1059 ; *Advancement, maintenance, and accumulation clauses,* p. 1060 ; *Ultimate trusts of husband's and wife's fortunes,* p. 1061,

Trusts after death of survivor of husband and wife.

(*i*) If the husband takes the first life interest determinable on bankruptcy, in the wife's fortune, substitute for the trusts in the text, " *Life interest determinable on bankruptcy,* p. 1054, *form* XV.," with the addition, if so intended, of the clause in the text as to the exercise of the powers after such determination, " AND SHALL, after the death of the sd A., or the determination during his life of the trust hereinbefore declared of the sd income in his favour, pay the income of the fortune of the sd B. to the sd B., &c., *continue life interest to wife,* p. 1053, *form* IX ;" for a protected life interest, add, " and shall, after the death of the sd B., and the determination, &c.," *continue discretionary trust,* p. 1055, *form* XVII. ; *where the life interest is not to be protected, insert form* XVIII.

(*a*) Add here, if so intended, " but so that in the event of the sd A. surviving the sd B., and the failure or determination in his lifetime of the trust hereinbefore declared in his favour of the income of the fortune of the sd B., the power lastly hereinbefore contained shall not be exercised so as to diminish the share to which any child of the sd intended marriage shall have become entitled, by virtue of the trusts hereinbefore contained, of the fortune of the sd B."

form XXX., *and note; Agreement to settle wife's after-acquired property*, p. 1078; *Covenant by husband with trustees to pay annuity*, p. 1068, *form* XLI., *saying*, "such yearly sum as is hereinafter mentioned, that is to say, during the joint lives of the sd A. and B. the sum of £——, and in case the sd B. shall die in the lifetime of the sd A., and while any issue of the sd intended marriage shall be living, then during the remainder of the life of the sd A., if and so long as any issue of the sd intended marriage shall be living, the sum of £——"; AND IT IS HEREBY AGREED AND DECLARED that the sd yearly sum of £—— or £——, as the case may be, shall be held by the sd trustees and trustee upon the trusts hereinbefore declared concerning the income of the trust premises secondly hereinbefore assigned, with the exception that after the death of the sd B., if the same shall happen in the lifetime of the sd A., the sd trustees or trustee shall pay or apply the yearly sum, if any, then payable under the covenant lastly hereinbefore contained to the persons or person and in the manner to whom and in which such income would be payable or applicable if the sd A. were then dead; AND THE SD A. doth hereby charge his share in the net profits of the sd business, with the payment of the sd respective yearly sums of £—— and £—— at the times and in manner aforesd; *Power to invest in purchase of land*, p. 1076, *form* LII., *or* p. 1078, *form* LIII.; *Power to either party to make a settlement on a future marriage*, p. 1082, *form* LVII.; [*Clause putting wife, if an infant, to her election to confirm settlement*, p. 1087;] *Power to trustees, at cost of A., to obtain a stop order on*, "the share and premises first hereinbefore assigned," p. 789, *mutatis mutandis; Power to trustees to apportion blended trust funds, and determine questions, and to arrange and compromise*, p. 1087; *Power to accept stocks, &c.*, p. 1088, *form* LXV.; *Trustee clause*, p. 1090, *form* LXIX.

Covenant to pay annuity variable in amount.

Trusts of annuity.

Charge on profits of business.

IN WITNESS, &c. (*b*)

(*b*) Notice of the settlement must be given to the trustees of the will, and a stop order obtained on the fund in court.

VI.

PREC. VI.

SETTLEMENT, *on Marriage, of* FREEHOLDS *belonging to* HUSBAND *by means of a* TRUST *for* SALE, *and* DECLARATION *of* TRUST *of the* PROCEEDS *of Sale effected by* ONE DEED (*c*). VARIATION *where there are* NO RECITALS.

Recitals.

Parties, A., *husband*, 1; B., *wife*, 2; C., D., and E., *trustees*, 3. *Recite intended marriage*, p. 1039; *Title of A. as in a Conveyance on Sale, see* "CONVEYANCES"; AND WHAS upon the treaty for the sd intended marriage it was agreed that the sd —— and premises should be assured to the sd C., D., and E., their heirs and assigns, in manner hereinafter appearing, upon the trusts, and with and subject to the powers and provisions hereinafter declared and contained concerning the same; *Agreement as to settlement of wife's after-acquired property*, p. 1044: (*d*) NOW THIS INDRE WITNESSETH that in pursuance of the sd agreement, and in consideration of the sd intended marriage, the sd A., with the approbation of the sd B., doth hereby, [*if A. has a power of appointment say*, in exercise of the power for this pur-

Agreement for settlement.

Witnesseth.

(*c*) For similar settlements, effected by two deeds, see Precedents VII., VIII., and IX. If the property, or any part of it, is likely to be sold, it is better that the conveyance in trust for sale should be by a separate deed, in order that the settlement may not become part of the title to the land. But if in the event the land is retained unsold, the settlement, whether by the same or a separate deed, must necessarily become a title deed. For variations where an undivided share is settled, see the next Precedent, and for a reversion, see Precedents VIII. and IX.

(*d*) In a simple case, recitals might be dispensed with, the operative part commencing as follows, "WITNESSETH, that in pursuance of an agreement in this behalf entered into upon the treaty for, and in consideration of, a marriage which is intended shortly to be solemnized between the sd A. and B., the sd A. doth hereby [in exercise of a power contained in a certain indre, dated, &c. and expressed, &c., and of every other power, &c.,]" as in the text.

pose given to him by the hereinbefore recited indre of, &c., and of every other power enabling him in this behalf appoint, and by way of further assurance doth hereby] grant unto the sd C., D., and E., and their heirs, *Parcels, General words, Estate clause, as in a Conveyance on Sale:* To HAVE AND TO HOLD the sd —— and premises hereinbefore expressed to be hereby assured UNTO the sd C., D., and E., and their heirs, To THE USE of the sd A., and his heirs, until the sd intended marriage, and after the sd marriage, To THE USE of the sd C., D., and E., their heirs and assigns, UPON TRUST, &c., *Trust for Sale,* &c., p. 1069: AND IT IS HEREBY AGREED and declared that the sd C., D., and E., or the survivors or survivor of them, or the exors or admors of such survivor, or other the trustees or trustee for the time being of these presents (hereinafter called the sd trustees or trustee), shall, with the consent in writing of the sd, *husband and wife,* or the survivor of them, during their, his, or her lifetime, and after the death of such survivor at the discretion of the sd trustees or trustee, invest the residuary or net moneys to arise from the sale under the trust for sale hereinbefore contained of the hereditaments and premises hereby assured, or any of them, as and when the sd moneys shall be received, in the names or name [or under the legal control] of the sd trustees or trustee in or upon, &c., *Investments,* p. 1049, *form* IV., V., *or* VI.; *Trusts for husband for life,* p. 1053, *form* XI.; *Wife for life, form* XII.; AND AFTER the decease of the survivor of the sd A. and B. shall stand possessed of the sd trust premises and the income thereof, *Usual trusts for issue of marriage, as in Prec.* I.; *Ultimate trust in default of issue, for husband,* p. 1061, *form* XXX.; *Power to manage until sale,* p. 1070, *form* XLIV. *or* XLV. (*e*); *Power to grant leases,* p. 1072 (*e*);

PREC. VI.

Grant.

Parcels, &c.

Habendum.

To uses.

Trust for investment.

(*e*) If the expression, "the sd trustees or trustee," has been defined in the previous part of the deed to mean the trustees or the survivors or survivor or the *exors or admors* of the last survivor, substitute for the words, "the sd trustees or trustee," in these two powers the words, "the sd C., D., and E., or the survivors or sur-

PREC. VI.

Power to invest in the purchase of land. (*f*)

Trusts of rents and profits until sale, p. 1076; PROVIDED ALWAYS, and it is hereby agreed and declared that it shall be lawful for the sd trustees or trustee, during the lives or life of the sd A. and B., or the survivor of them, at their, his, or her request in writing, to invest the residuary or net moneys arising from the sale or conversion of any of the sd hereditaments and premises, or of any investments of such moneys (which the sd trustees or trustee are hereby authorized to sell for such purpose), or any other principal moneys subject to the trusts of these presents, in the purchase of any manors, messuages, lands, or hereditaments in England or Wales, of freehold, copyhold, or customary tenure, or held for any term of years of which not less than sixty years shall be unexpired at the time of such purchase, or in the enfranchisement of any copyhold or customaryhold hereditaments purchased under the present power, and that all such hereditaments shall be assured to the sd trustees or trustee, their or his heirs, exors, admors, and assigns, according to the tenure thereof, UPON the trusts, and with and subject to the powers and provisions hereinbefore declared and contained concerning the hereditaments hereby settled, or such of the sd trusts, powers, and provisions as shall be subsisting, or capable of taking effect. *Provision for settlement of wife's after-acquired property*, p. 1078, *form* LIV., *with the variation in note* (*c*); *Power to trustees to apportion blended trust funds, &c.*, p. 1087; *Short trustee clause*, p. 1090, *form* LXIX.; *Covenants by A. for title, as in a Conveyance on Sale*, p. 275.

IN WITNESS, &c.

vivor of them, or the *heirs* of such survivor." In the case of leaseholds no alteration would be needed.

(*f*) Where land is settled, a power to purchase adjoining land may be useful.

VII.

CONVEYANCE, *on Marriage, of* FREEHOLDS *belonging to* WIFE *in* TRUST *for* SALE, *with a* DECLARATION *of* TRUST *of the* PURCHASE MONEY *by* REFERENCE *to a* SETTLEMENT *of* EVEN DATE. VARIATIONS *for an* UNDIVIDED SHARE. PREC. VII.

Parties, A., *husband*, 1; B., *wife*, 2; C., D., and E., *trustees*, 3. *Recite intended marriage*, p. 1039; *Title of B., as in a Conveyance on Sale, see* "CONVEYANCES"; *Agreement for settlement as in last Precedent*: (*g*) NOW THIS INDRE WITNESSETH that in pursuance of the sd agreement, and in consideration of the sd intended marriage, the sd B., with the approbation of the sd A., doth hereby grant unto the sd C., D., and E., and their heirs, *Parcels, General words, Estate clause, as in a Conveyance on Sale* (*h*): TO HAVE AND TO HOLD the sd premises hereinbefore expressed to be hereby granted UNTO the sd C., D., and E., and their heirs, TO THE USE of the sd B. and her heirs until the sd intended marriage, and after the sd marriage, TO THE USE of the sd C., D., and E., their heirs and assigns, UPON TRUST, &c., *Trust for sale, &c.*, p. 1069; *Power to manage until sale*, p. 1070, *form* XLIV. *or* XLV.; *Power to grant leases*, p. 1072, *form* XLVI. *or* XLVII. (*a*): *Short trustee clause*, p. 1090, *form* LXIX., *omitting the part as to the indemnity of trustees. Covenants by B. for title, as in a Conveyance on Sale*, p. 275.

Recitals.

Witnesseth.

IN WITNESS, &c.

(*g*) For variation where recitals are omitted, see the last precedent, p. 1108, note (*d*).

(*h*) For an undivided share, say, "ALL THAT equal undivided —— part or share, and all and every other, if any, the part or share, parts or shares, of or to which the sd B. is seised, possessed, or entitled, of and in, *parcels*, and of and in, *General words, Estate clause.*"

(*a*) For an undivided share, insert the addition in form XLIX., p. 1074, and power to partition, p. 1075, form L.

VIII.

PREC. VIII.

CONVEYANCE, *on Marriage, of* FREEHOLDS, LEASEHOLDS *and* COPYHOLDS, *belonging to* HUSBAND, *in* TRUST *for* SALE, *with a* DECLARATION *of* TRUST *of the* PURCHASE MONEY *by* REFERENCE *to a* SETTLEMENT *of* EVEN DATE. VARIATION *where* PART *of the Freeholds is* REVERSIONARY.

Parties, A., *husband*, 1; B., *wife*, 2; C., D., and E., *trustees*, 3. *Recite intended marriage*, p. 1039; *Lease and devolution thereof to A., and title of A. to freeholds and copyholds, as in a Conveyance on Sale:* AND WHAS, upon the treaty for the sd intended marriage, it was agreed that the sd freehold, leasehold, and copyhold hereditaments should be assured to the sd C., D., and E., their heirs, exors, admors, and assigns respectively, in manner hereinafter appearing, Upon the trusts, and with and subject to the powers and provisions hereinafter declared and contained concerning the same respectively: NOW THIS INDRE WITNESSETH that in pursuance of the sd agreement, and in consideration of the sd intended marriage, the sd A., with the approbation of the sd B., doth hereby grant unto the sd C., D., and E., and their heirs, *Freehold parcels, General words, Estate clause, as in a Conveyance on Sale:* TO HAVE AND TO HOLD all the sd premises hereinbefore expressed to be hereby granted (*b*), UNTO the sd C., D., and E., and their heirs, TO THE USE of the sd A., and his heirs, until the sd intended marriage, and afterwards TO THE USE of the sd C., D., and E., their heirs and assigns, UPON THE TRUSTS, and with and subject to the powers and provisions hereinafter declared and contained concerning the same: AND THIS INDRE ALSO WITNESSETH that

Recitals.

Agreement for settlement.

Witnesseth.

Grant of freeholds.

Habendum.

Further witnesseth.

(*b*) If the freeholds are partly reversionary, add here, "subject as to the sd hereditaments secondly hereinbefore described, to the life estate or interest therein of the sd K., under the sd recited indre, &c., *or*, 'will.'"

PREC. VIII.

in pursuance of the sd agreement, and in consideration of the sd intended marriage, the sd A., with the approbation of the sd B., doth hereby assign unto the sd C., D., and E., their exors, admors, and assigns, *Leasehold parcels, by reference to lease, Estate clause, Habendum to C., D., and E., subject to rent and covenants, as in a Conveyance on Sale*, p. 301: IN TRUST for the sd A., his exors and admors, until the sd intended marriage, and afterwards, UPON THE TRUSTS, &c., *as above*: AND THIS INDRE FURTHER WITNESSETH that in pursuance of the sd agreement and in consideration of the sd intended marriage, *Covenant by A. with C., D., and E.*, "in case the sd intended marriage shall take place," *to surrender copyholds, as on a sale*, p. 298, *but*, "at the cost of the sd A. or his heirs," TO THE USE of the sd C., D., and E., their heirs and assigns, UPON THE TRUSTS, &c., *as above*; AND THE SD A. doth hereby declare that after the sd intended marriage, and until the sd copyhold premises shall have been surrendered in pursuance of the covenant hereinbefore contained, he, the sd A. and his heirs, will hold the same premises in trust for the sd C., D., and E., their heirs and assigns: AND IT IS HEREBY agreed and declared that the sd C., D., and E., their heirs, exors, admors, and assigns respectively shall, from and after the sd intended marriage, stand seised and possessed of the sd freehold, leasehold, and copyhold hereditaments and premises hereby granted, assigned, and covenanted to be surrendered respectively, UPON TRUST, &c. *Trust for sale*, p. 1069, *with variation for freeholds, copyholds, and leaseholds; Power to manage real estate until sale*, p. 1070, *form* XLIV. *or* XLV.; *Power to grant leases*, p. 1072, *form* XLVI. *or* XLVII. (*c*); *Short trustee clause*, p. 1090, *form* LXIX., *omitting the part relating to the in-*

Assignment of leaseholds.

Further witnesseth.

Covenant to surrender copyholds.

Declaration of trusts.

(*c*) Where the freeholds are partly reversionary, insert, *addition to powers of sale and leasing*, p. 1073, *form* XLVIII., *saying*, "such parts of the freehold hereditaments hereby assured as are reversionary."

PREC. VIII. *demnity of the trustees. Covenants by A. for title, as in a Conveyance on Sale*, p. 280, *form* IX., *with variations for conveyance to several as joint tenants, as at* p. 275, *form* V., *and* p. 279, *form* VIII. (*d*).

IN WITNESS, &c.

IX.

PREC. IX.

SETTLEMENT, *on Marriage, of the* PROCEEDS *of sale of* REAL *estate belonging to* HUSBAND CONVEYED *in trust for sale by a* DEED *of* EVEN DATE (*with* VARIATIONS *where the interest is* REVERSIONARY), *and of a* SUM COVENANTED *to be* PAID *by the* WIFE'S FATHER *on his death. The* HUSBAND *takes the* FIRST LIFE INTEREST *in the whole settled property,* SUBJECT TO *paying an* ANNUITY *to the* WIFE. TRUSTS *for* ISSUE, *giving* NO POWER *of* APPOINTMENT *to the* PARENTS, *the* ISSUE *of any* CHILD DYING *in their lifetime being* SUBSTITUTED. (*e*)

Recitals.

Parties, A., *husband*, 1; B., *wife*, 2; C., *wife's father*, 3; D., E., and F., *trustees*, 4. *Recite intended marriage*, p. 1039; *Conveyance in trust for sale of even date*, p. 1043; *Agreement by* C. *to enter into covenant for payment of the*

(*d*) Where the freeholds are partly reversionary, substitute for the addition at p. 281, note (*g*), "subject as to the sd freehold hereditaments secondly hereinbefore described, to the life estate or interest therein of the sd K. under the sd recited indre, &c., *or* 'will';" and for the addition in note (*i*), "subject as aforesd as regards the sd freehold hereditaments secondly hereinbefore described;" and for the addition in note (*n*), "other than and except, as regards the sd freehold hereditaments secondly hereinbefore described, the sd K., or any person claiming or to claim through under or in trust for him during his life."

(*e*) This form of trusts for the issue is exceptional, and not to be recommended.

" principal sum and interest hereinafter mentioned," p. 1044; *Agreement for settlement of wife's after-acquired property*, p. 1044: NOW THIS INDRE WITNESSETH, that in pursuance of the sd agreement, and in consideration of the sd intended marriage, it is hereby agreed and declared that the sd, *trustees*, their exors, admors, and assigns, shall stand possessed of the residuary or net moneys to arise from the sale, under the sd trust for sale in the recited indre of even date herewith contained, of the sd hereditaments and premises thereby assured (*f*), or any of them (*g*), UPON TRUST that the sd, *trustees*, or the survivors or survivor of them, or the exors or admors of such survivor, or other the trustees or trustee for the time being of these presents, (hereinafter called the sd trustees or trustee), shall, (*a*) with the consent in writing of the sd, *husband and wife*, or the survivor of them, during their, his, or her lifetime, and after the death of such survivor, at the discretion of the sd trustees or trustee, invest the same residuary or net moneys, as and when the same shall be re-

PREC. IX.

Witnesseth.

Declaration of trusts of husband's fortune.

To invest.

(*f*) Or, " Granted, assigned, and covenanted to be surrendered," or as the case may be.

(*g*) If the settlement comprises a reversionary interest in real estate, which the trustees are empowered to sell in the lifetime of the tenant for life, with his concurrence, add here, " and also (from and after the decease of the sd, *tenant for life*,) of the investments representing the proceeds of any sale made in his lifetime, with his concurrence, of the sd hereditaments and premises, or any part thereof."

(*a*) In the case mentioned in the last note, substitute as follows from this point, " either retain any such investments as last aforesd, so long as the sd trustees or trustee may think fit, or shall at any time or times with the consent, &c., *as above*, sell, call in, or convert into money the same or any part thereof, and shall invest the moneys produced thereby, and also the sd residuary or net moneys arising from any sale made as aforesd in the lifetime of the sd, *tenant for life*, without his concurrence, or after his decease, as and when the same shall be received, in the names, &c."

PREC. IX.

Income during joint lives.

ceived, in the names, &c., *remainder of trust for investment*, p. 1048, *form* III., *and form* IV., V., *or* VI.; *Trust during joint lives for payment of annuity to wife out of the income*, "of the sd trust premises and the investments representing the same," *and residue of income to husband*, p. 1054, *form* XIV.; AND AFTER the death of such one of them the sd, *husband and wife*, as shall first die, shall pay the whole of the sd income to the survivor of them, or his or her assigns, during his or her life; AND AFTER the death of such survivor, shall stand possessed of the sd trust premises and the investments representing the same, in trust for such of the children of the sd intended marriage living at the death of such survivor, and such of the children living at the death of such survivor of any child of the sd intended marriage who shall then be dead, as being male shall attain the age of twenty-one years, or being female shall attain that age or marry, and if more than one, as tenants in common in equal shares, but so that the children, being objects of this trust, of any child of the sd intended marriage who shall have died, shall take equally between them the share only which their parent would have taken if living: *Advancement, maintenance, and accumulation clauses*, p. 1060, *extended to*, "child or grandchild of the sd intended marriage"; *Ultimate trust of husband's fortune*, "if there shall be no child or grandchild of the sd intended marriage who shall attain a vested interest under the trusts hereinbefore declared," p. 1061: *Trusts of rents and profits of real estate until sale*, p. 1076; [*Power to invest in the purchase of land*, p. 1076;] *Covenant by C. that his representatives shall pay a sum of £—— on his death, with power to him to pay it in his lifetime*, p. 1067: AND IT IS HEREBY AGREED AND DECLARED that the sd trustees or trustee shall stand possessed of the sd sum of £——, when the same shall be received, upon the trusts and with and subject to the powers and provisions hereinbefore declared and contained respecting the net moneys to arise from any sale under the trust for sale in the recited indre of even date herewith contained, but not so as to increase the

During life of survivor.

Trusts for children and issue.

Ultimate trust.

Trusts of sum covenanted to be paid by wife's father.

sd annuity of £—— payable to the sd B., and save and except that, if there shall be no child or grandchild of the sd intended marriage who shall attain a vested interest under the trusts hereinbefore declared, then and in such case, and from and after the death of the survivor of the sd A. and B. and such default or failure of their issue, which shall last happen, the sd trustees or trustee shall stand possessed of the sd sum of £—— and the investments representing the same, and the income thereof or so much thereof respectively as shall not have been applied or disposed of under the trusts or powers hereinbefore contained, in trust for the sd C., his exors, admors, and assigns: *Provision for settlement of wife's after-acquired property*, p. 1078, *with the variation in note* (*c*), p. 1080, *saying*, "child or grandchild"; *Power to trustees to apportion blended trust funds and determine questions, &c.*, p. 1087; *Trustee clause*, p. 1090, *form* LXIX. PREC. IX.

In witness, &c.

X.

SETTLEMENT, *on Marriage, with the* Approval *of the* Chancery Division, *under the* Infants' Settlement Act (18 & 19 *Vic., c.* 43), *of the* Wife's Reversionary Interest *in* Personalty, *and in* Portions *charged on* Real Estate, *the* Eldest Son *of the marriage being* Postponed *to the younger children.* Covenant *by* Wife's Father *to pay an* Annuity Variable *in* Amount. Variations *where the* Infant *is a* Ward *of* Court (*a*). PREC. X.

Parties, A., *husband*, 1; B., *wife*, an infant of the age of —— years, 2; C., *wife's father*, 3; D., E., and

(*a*) As to settlements on the marriage of infants, see 3 Davidson, Prec., 3d ed., pp. 647, 891.

PREC. X.

Recitals.

F., *trustees*, 4. *Recite intended marriage*, p. 1039 ; *B.'s title to reversionary interest under settlement and deed poll of appointment*, p. 1040 ; *Particulars of trust property*, p. 1041 : AND WHAS under or by virtue of another indre of settlement, dated, &c., and made, &c. (being a settlement of the estates of the sd C., situate in the county of ——, executed in consideration of, and shortly before the marriage of the sd C. and G., his late wife), and by virtue of the trusts of a term of —— years by the sd last-mentioned indre of settlement limited in the sd estates for raising portions for the daughters and younger sons of the sd C. and G., and by virtue of a deed poll of appointment under the hand and seal of the sd C., bearing even date with but executed before these presents, in pursuance of a power contained in the sd last-mentioned indre of settlement, the sd B., if her sd intended marriage shall take place within six calendar months from the date of the sd last-mentioned deed poll, will become absolutely entitled to the sum of £—— to be raiseable and payable to her on the decease of the sd C. : AND WHAS, upon the treaty for the sd intended marriage, it was agreed that the trust moneys, stocks, funds, shares, and securities, to which the sd B. is entitled by virtue of the indre and deed poll first hereinbefore mentioned, and the sd sum of £—— to which she, the sd B., will become entitled under the trusts of the term of —— years limited by the secondly hereinbefore-mentioned indre of, &c., and the secondly hereinbefore-mentioned deed poll, should be assigned to the sd D., E., and F., in manner hereinafter appearing, to be held upon the trusts, and with and subject to the powers and provisions hereinafter declared and contained concerning the same : *Agreement as to settlement of wife's after-acquired property*, p. 1044 : AND WHAS, upon the treaty for the sd intended marriage, it was agreed that further provision should be made for the sd B. by a settlement of the real estates of the sd A., situate at ——, which settlement has been effected by an indre bearing even date herewith and

Wife's title to sum raiseable under trusts of portions term.

Agreement for settlement.

Agreement for real settlement of even date.

Sanction of Chancery Division.

expressed, &c.: AND WHAS (*b*) the Chancery Division of the High Court of Justice has sanctioned the making by the sd B., in contemplation of the sd intended marriage, of the settlement intended to be made by these presents, as appears by an order of the Court made by his lordship [the Master of the Rolls] on the —— day of —— (*c*), in the matter of B., an infant, by C., her next friend, *or*, "guardian," And in the matter of the Act of Parliament (18 & 19 Vict., c. 43), intituled, "An Act to Enable Infants, with the approbation of the Court of Chancery, to make binding Settlements of their Real and Personal Estate on Marriage," whereby, after premising that the sd judge was of opinion (*d*) that the settlement proposed to be effected by the indre thereinafter mentioned was a proper settlement to be made upon, or in contemplation of the intended marriage of the infant B. with the sd A., of the property of the sd infant comprised therein, and that the indre therein referred to (being these presents) was a proper indre for giving effect to such settlement, the sd judge did, pursuant to the sd Act of Parliament, sanc-

(*b*) Where the infant is a ward of court, and the order directs enquiry to be made as to the fitness of the marriage, and that proposals for a settlement should be laid before the judge, say, "WHAS, pursuant to an order, &c., proposals for a settlement on the marriage of the sd B. with the sd A. were laid before the sd judge in chambers, and it appears by the certificate, dated, &c., of the chief clerk of the sd judge, that the sd marriage between the sd B. and A. is a proper marriage for the sd B., and that these presents have been settled by the sd judge as a proper settlement to be made and executed previously to such marriage."

(*c*) Where the infant is a ward of court, refer to the proceedings constituting her a ward, as, "in the action X. *v.* Y., *adding reference to record*, and."

(*d*) Where the infant is a ward of court, say, unless the form in note (*b*) above is used, "that the sd intended marriage was a fit and proper marriage, and."

PREC. X.

tion and approve of the same, and did order that the sd B. be at liberty, upon or in contemplation of her marriage with the sd A., to execute the same accordingly: NOW THIS INDRE WITNESSETH that in pursuance of the sd agreement in this behalf, and in consideration of the sd intended marriage, the sd B., with the sanction of the Chancery Division of the High Court of Justice, and with the approbation of the sd A., &c., *continue assignment of reversionary interests*, p. 1045, *the portion money being described as*, "ALL THAT the sd sum of £——, or other the sum or sums, to which the sd B. is or will, upon the decease of the sd C., or otherwise, become entitled under the trusts of the sd term of —— years limited by the secondly hereinbefore-mentioned indre of settlement of, &c., and the secondly hereinbefore-mentioned deed poll bearing even date herewith, as hereinbefore recited, and all interest to become payable in respect of the same sum or sums" (*e*); *Covenant by A. for further assurance by himself and B., and persons claiming under or in trust for them respectively*, p. 1047, *form* II.: AND IT IS HEREBY AGREED AND DECLARED that the sd D., E., and F., their exors, admors, and assigns, shall after the sd intended marriage stand possessed of the sd premises hereinbefore assigned, UPON TRUST that, &c., *Trust for investment*, p. 1048, *form* III. (*f*): AND IT IS HEREBY AGREED AND DECLARED, &c., *First life-interest to B. during joint lives, for her separate use, without anticipation, then to the survivor for life*, p. 1053, *forms* X. *and* XIII.: AND AFTER the death of such survivor,

Witnesseth.

Assignment by wife with sanction of court.

Trusts.

Income during lives of husband and wife.

Trusts after death of survivor.

(*e*) The portion, being a charge on the settled estates, would usually be assigned by a separate deed, in order that the settlement may not become a title deed to the real estate. The assignment would, in that case, recite the intended marriage, the wife's title to the portion as in the text, and the agreement for the assignment upon the trusts thereinafter declared, as in the text. The operative parts would consist of the assignment, in consideration of the intended marriage, to the trustees in trust for the wife until the marriage, and afterwards, upon the trusts declared by the settlement of even date, (see p. 1045), and the trustee clause, p. 1090, form LXIX., omitting the part with reference to the indemnity of trustees.

(*f*) The details of the investments will be settled in chambers.

shall stand possessed of all the sd trust premises, and the moneys and investments representing the same respectively, and the income thereof respectively, *trusts for children, excluding eldest son taking*, "the first estate in tail male under the limitations of the sd indre of settlement bearing even date herewith," p. 1059, *form* XXV.; *Hotchpot*, p. 1059; *Advancement, Maintenance, and Accumulation*, p. 1060; *Ultimate trusts of wife's fortune*, p. 1061; *Agreement for settlement of other or after-acquired property of B.*, p. 1078, [*adding*, "with the exception that the powers of appointment hereinbefore given to the sd A. and B., and the survivor of them, in favour of the younger children of the sd intended marriage shall be extended so that an eldest or only son for the time being entitled to the first estate in tail male, under the limitations of the sd indre of settlement bearing even date herewith, may be an object of the sd powers in the same manner as if he had been a younger child;"] *Power to wife to settle on a future marriage part of the property varying in amount with the number of children of the intended marriage*, p. 1084; *Covenant by C. with D., E., and F.*, that in case the sd intended marriage shall take place within six calendar months from the date of these presents, he, the sd C. will, during his life, provided the sd A. or the sd B., or any issue of their marriage shall be living, pay to the sd trustees or trustee a yearly sum of £——, and that his exors or admors will after his death, in case his wife the sd K. shall survive him, and provided the sd A. or the sd B. or any issue of their marriage shall be living, pay to the sd trustees or trustee, during the life of the sd K., a yearly sum of £——, (but subject from time to time to such deduction as is hereinafter mentioned in that behalf), such sum of £—— or £——, as the case may be, to accrue from day to day, but to be payable on the usual quarter days, and the first payment thereof respectively to be made on such of the sd days as shall happen next after the sd intended marriage or the death of the sd C., as the case may be: PROVIDED ALWAYS that, if

Agreement to settle wife's after-acquired property.

Covenant to pay annuity varying in amount.

PREC. X.

the sd C. shall by his will give any legacy amounting in value to £—— to or in trust for the sd B., or to or in trust for the sd B. and A. and their children or issue, or any of them, the sd annuity of £—— shall not become payable, and if the sd C. shall by his will give a legacy less in value than £—— to or in trust for the sd B., or to or in trust for the sd B. and A., and their children or issue, or any of them, then interest shall be computed on the amount of such legacy at the rate of £4 per cent. per annum, and the amount of such interest shall be deducted from the same annuity of £——: AND IT IS HEREBY AGREED AND DECLARED that the sd trustees or trustee shall stand possessed of the sd annuity of £—— or £——, or of such smaller amount as shall for the time being be payable under the covenant of the sd C. hereinbefore contained, upon such trusts and with and subject to such powers and provisions as the same would be held upon, or with or subject to, if such annuity were annual income arising in respect of the premises hereinbefore assigned, after the same premises had fallen into possession: AND THE SD C. doth hereby expressly declare that no payment of either of the sd annuities shall, and that no legacy or other provision which he may give or make by his will, or otherwise, to or for the sd B., or to or for her husband or issue (unless the contrary shall be expressly directed in the will or other instrument, by which such legacy or other provision is given or made), shall be accounted as being given or made in or towards satisfaction of the sd sum of £—— raiseable under the trusts of the term of —— years limited by the sd indre of, &c., secondly hereinbefore recited; *Power to apportion trust funds, &c.*, p. 1087; *Trustee clause*, p. 1090, *form* LXIX.

Trusts of annuity.

Declaration that annuity or legacies shall not be in satisfaction of portion.

IN WITNESS, &c.

Indorsement (g) on the first skin of the Engrossment. PREC. X.

In the High Court of Justice, Chancery Division.

[X. *v.* Y., *add reference to record,*]

[*or,* In the matter of B., an infant, by C., her next friend, *or,* "guardian," and in the matter of the Act of Parliament, 18 & 19 Vic., c. 43.]

This indre has been settled and approved by the Master of the Rolls [Vice-Chancellor Sir —— ——,] as appears by an order, dated the —— day of ——.

L. M., Chief Clerk.

XI.

SETTLEMENT *on the Marriage of a* TRADER *of a* SUM *of money intended to be* EMPLOYED *in his* BUSINESS *on* TRUSTS *for* HIMSELF *and his intended* WIFE, *and his* ISSUE BY HER, *and by a* FORMER MARRIAGE (*a*), *and of* FURNITURE *belonging to the Husband, and a* SUM *of money to be applied in the* PURCHASE *of other* FURNITURE *in trust for the* WIFE'S SEPARATE USE (*b*). PREC XI.

Parties, A., *husband,* 1; B., *wife,* 2; D. and E., *trustees,* 3. *Recite intended marriage,* p. 1039: AND WHAS Recitals.

(*g*) For the form of affidavit verifying the engrossment, see Forms to Daniell's Chancery Practice, 1224.

(*a*) As to whether limitations to the issue of either party by a former marriage or other collaterals are to be treated as voluntary or within the consideration, see 3 Davidson, Prec., 3rd ed., 670, *et seq.*; Dart V. & P., 5th ed., 894, *et seq.*; *Price* v. *Jenkins*, 4 Ch. D. 483; S. C. 5 Ch. D. 619: *Gale* v. *Gale*, 6 Ch. D. 144.

(*b*) The object in this case is to protect the husband's existing and future-acquired furniture from his creditors. This may be effected as to the existing furniture by a simple trust for the wife's separate use (see 3 Davidson, Prec., 3rd ed., p. 818, note), but a settlement of a trader's future property being of doubtful validity as to creditors (see the Bankruptcy Act 1869, 32 & 33 Vic. c. 71, s. 91), the sum likely to be required for the purchase of the furniture is settled as an existing fund.

PREC. XI.

Issue by former marriage.

Payment of sum by husband to trustees.

Witnesseth.

Trusts of one sum of money during lives of husband and wife.

After death of husband and wife.

the sd A. has —— children, by L. his former wife, now living, all of whom are under the age of twenty-one years and unmarried: AND WHAS, in pursuance of an agreement made upon the treaty for the sd now intended marriage, the sum of £6000 has been paid by the sd A. to the sd D. and E. in trust, &c., p. 1039, *form* II., And the sd A. has agreed to assign unto the sd D. and E. all the furniture and effects belonging to him, the sd A., which are particularly described in the schedule hereunder written, in trust, &c., p. 1039, *form* II.: NOW THIS INDRE WITNESSETH that in pursuance of the sd agreement in this behalf, and in consideration of the sd intended marriage, it is hereby agreed and declared that the sd D. and E., their exors, admors, and assigns, shall, after the sd intended marriage, stand possessed of the sum of £5000, part of the sd sum of £6000 upon trust that, &c., *Trust for investment*, p. 1048, *form* III., *and form* IV., V., *or* VI.; *Trust of income for wife, for her separate use without power of anticipation during joint lives of herself and her husband*, p. 1053; *and for survivor during his or her life*, p. 1053; *Proviso charging husband's life interest in*, "the sum of £5000 and the investments representing the same," *with maintenance of children*, "whether by his sd former wife L., or his sd now intended wife B.," p. 1056, *mutatis mutandis*: AND IT IS HEREBY AGREED AND DECLARED that after the death of the survivor of the sd A. and B., the sd trustees or trustee shall stand possessed of the sd sum of £5000 and the investments representing the same, and the income thereof, in trust (*c*) for such person or persons or purposes, and with and subject to such powers, provisoes, and declarations, and in such manner as the sd A. shall by will or codicil appoint: AND IN DEFAULT of such appointment, and so far as no such appointment shall extend, In trust, &c., *trust in default of*

(*c*) Or substitute for this a power of appointment by deed or will to A. in favour "of the children or remoter issue of the sd A., whether by his sd former or now intended wife," p. 1057, *form* XXI., *mutatis mutandis*.

appointment for, "the children or child of the sd A., whether by his sd former or now intended wife," *if any have attained twenty-one say*, "have attained, or shall attain, &c.," p. 1058, *form* XXIV., *mutatis mutandis*; *Hotchpot clause* p. 1059; *Advancement, maintenance, and accumulation clauses*, p. 1060, *saying*, "child of the sd A.;" *Ultimate trusts of*, "the sd sum of £5000, and the investments representing the same, and the income thereof respectively," *for A.*, p. 1061, *saying*, "child of the sd A.;" *Power to lend trust funds to husband*, p. 1052, *form* VIII.: AND THIS INDRE ALSO WITNESSETH, &c., *assignment by A. of furniture in schedule to trustees*, p. 1045, *form* I: "IN TRUST for the sd A., his exors and admors, until the sd intended marriage, and afterwards, IN TRUST for the sd B. absolutely, for her sole and separate use, independently of the sd A., and of his debts, control, and engagements: AND THIS INDRE ALSO WITNESSETH that in further pursuance of the sd agreement, and in consideration of the sd intended marriage, it is hereby agreed and declared that after the sd intended marriage the sd D. and E., their exors, admors, and assigns, shall stand possessed of the sum of £1000, residue of the sd sum of £6000, upon trust, that the sd trustees or trustee shall apply such sum, or any part or parts thereof, from time to time in the purchase of furniture, plate, or other household effects of a suitable character and description, or otherwise, as the sd B. shall direct, or shall pay such sum, or any part or parts thereof, from time to time to the sd B. for the purposes aforesd, without being in any way concerned to see to the application thereof: AND IT IS HEREBY AGREED AND DECLARED that all such furniture, articles, and effects, as may be purchased, whether by the sd trustees or trustee or by the sd B. as last aforesd, And also the sd sum of £1000, or so much thereof as shall not have been applied for such purpose, until the same shall be so applied, shall be held in trust for or belong to the sd B., for her sole and separate use absolutely, independently of the sd A., and of his debts,

Assignment of furniture.

Trusts of other sum of money.

For purchase of furniture.

Trusts of furniture.

PREC. XI. Trustees' indemnity.

control, and engagements: PROVIDED ALWAYS, and it is hereby agreed and declared, that the sd trustees or trustee shall not be bound or concerned to interfere with the custody or care of the sd furniture and effects expressed to be hereby assigned, or which may be purchased as aforesd, unless requested in writing so to do by the sd B., and shall not be under any liability in respect of the custody, insurance, or preservation thereof. *Power to trustees to apportion funds, &c.*, p. 1087; *Short Trustee clause*, p. 1090, *form* LXIX.

IN WITNESS, &c.

The schedule above referred to.

Schedule of furniture.

XII.

PREC. XII.

SETTLEMENT, *on Marriage, of* WIFE'S LEASEHOLD *and* PERSONAL *estate for her* SEPARATE USE, *and so as to be at her* ABSOLUTE DISPOSAL, *with Provisions enabling her* INVESTMENTS *to be placed in her* OWN NAME *under the* MARRIED WOMEN'S PROPERTY ACT, 1870. (*d*)

Parties, A., *wife*, 1; B., *husband*, 2; C. and D., *trustees*, 3. *Recite intended marriage*, p. 1039: AND WHAS under a codicil bearing date, &c., to the will of the late X., the sd A. is entitled for her life to an annuity of £——, charged upon the hereditaments therein mentioned; *Recite lease*, p. 235; *Devolution to A.*, p. 236: AND WHAS the sd A. is absolutely entitled to the furniture, plate, and household effects in or about her sd dwelling-house, and to certain jewellery and other personal ornaments, and to the several stocks, funds, shares, and securities specified in the schedule hereto, and also to a balance not exceeding £—— at her bankers, Messrs. ——: AND WHAS upon the treaty for

Recitals. Title to annuity under codicil. Leaseholds. Furniture. Jewellery. Stocks, &c.

(*d*) 33 & 34 Vic. c. 93, ss. 2—6, and see s. 11.

Agreement for settlement.

the sd intended marriage it was agreed that the sd annuity of £——, and also the sd messuage and premises comprised in the hereinbefore recited indre of lease, and also the sd household and personal effects and chattels, and the sd stocks, funds, shares, and securities specified in the schedule hereto, should be respectively settled for the benefit of the sd A. in manner hereinafter appearing, and that these presents should contain such agreement as is hereinafter contained for the assignment and settlement of the other present and after-acquired property of the sd A.: AND WHAS, in pursuance of the sd agreement, the several stocks, funds, shares, and securities specified in the first part of the sd schedule hereto have been duly transferred by the sd A. to the sd C. and D., to be held upon the trusts hereinafter expressed, and the bonds or documents of title of or relating to the stocks, funds, and securities specified in the second part of the sd schedule hereto, which are transferable by delivery, have been deposited by the sd A. with her sd bankers to the intent that the same may remain so deposited in her name after her sd intended marriage for her separate use, and that such stocks, funds, and securities shall be subject to the trusts and provisions hereinafter expressed concerning the same respectively, and the stocks, funds, shares, and securities specified in the third part of the sd schedule have been transferred into the intended name of the sd A. as the wife of the sd B. to the intent that the same shall remain in her name after the sd intended marriage, and belong to her for her separate use and be subject to the trusts and provisions hereinafter expressed concerning the same: NOW THIS INDRE WITNESSETH, &c., *Assignment by A. with approbation of B. to C. and D.*, p. 1045, *of*, "FIRST, the sd annuity of £—— to which she the sd A. is entitled under the sd codicil of the sd X. as aforesd; SECONDLY, all and singular the sd piece of ground, messuage, or tenement, hereditaments and premises, by the hereinbefore recited indre of lease expressed to be demised with their respective rights, easements, and appurtenances;

Transfer of stocks to trustees.

Deposit of bonds with bankers.

Transfer of other stocks into wife's name.

Witnesseth. Assignment of annuity, leaseholds,

PREC. XII.

furniture, &c.

and, THIRDLY, all the household furniture, plate, china, books, and household effects, and all the jewellery and other personal ornaments to which she the sd A. is entitled," *Habendum to C. and D., their exors, admors, and assigns*, as to the sd annuity of £—— during the life of the sd A., and as to the sd leasehold premises during the residue of the sd term of —— years subject to the rent, covenants, conditions, and agreements by and in the sd indre of lease reserved and contained, and as to the residue of the sd premises absolutely, Nevertheless as to all the sd premises upon the trusts hereinafter declared concerning the same respectively ; *Covenant by A. and B. for further assurance*, p. 1047 : AND IT IS

Habendum.

Trusts of property assigned to trustees.

HEREBY AGREED AND DECLARED that the sd trustees or trustee shall stand possessed of all the sd premises hereinbefore assigned and of the sd stocks, funds, shares, and securities specified in the first part of the sd schedule hereto, IN TRUST for the sd A., her exors, admors, and assigns, until the sd intended marriage, and afterwards IN TRUST for such persons or person for such estates and interests, and for such purposes and in such manner as the sd A. shall from time to time or at any time notwithstanding her sd intended coverture, and whether covert or sole, by deed or any writing under her hand revocable or irrevocable, or by will or codicil, direct or appoint, and in default of and subject to any such direction or appointment, UPON TRUST that the sd trustees or trustee shall during the joint lives of the sd A. and B. permit the sd annuity and the rents, profits, and income of the sd other trust premises, or of such parts thereof as shall produce income, and also the sd leasehold premises, furniture, and personal chattels, to be received, held, used, and enjoyed by the sd A. independently of the sd B. and of his debts, control, and engagements, and so that she the sd A. shall have full power either personally to occupy the sd leasehold messuage and premises, or to let the same, and to sell or transpose the investment of or otherwise dispose of or deal with all the sd respective trust premises in such manner in all respects as if she were sole and unmarried, and her

receipt for the sd annuity, and the rents, profits, and income of, and for the proceeds of any sale or other disposition of any of the sd respective trust premises, shall be an effectual discharge for the same respectively: PROVIDED ALWAYS, and it is hereby agreed and declared, that in case the sd A. shall die in the lifetime of the sd B., the sd trustees or trustee shall hold all the sd trust premises, or so much thereof respectively as shall not have been appointed or disposed of by the sd A. during her lifetime, or by will or codicil, under the power of appointment or disposition, or by virtue of the trust for her separate use, hereinbefore contained, IN TRUST for the persons or person who would have become entitled thereto, if the sd B. had died in the lifetime of the sd A. (*e*): AND IT IS HEREBY AGREED AND DECLARED, that the several stocks, funds, shares, and securities specified in the second and third parts of the sd schedule hereto, although the same may not be vested in or under the legal control of the sd trustees or trustee, shall nevertheless be subject to the trusts, powers, and provisions hereinbefore declared and contained concerning the sd stocks, funds, shares, and securities specified in the first part of the sd schedule hereto, or such of the same trusts, powers, and provisions as may be applicable thereto: AND IT IS HEREBY AGREED AND DECLARED, that all moneys and property, which by means or in consequence of any sale, transposition of investment, or other disposition, may from time to time during the sd intended coverture become substituted for any of the sd trust premises, shall, in default of any appointment or disposition by the sd A. to the contrary, be and remain her separate estate and property, and be subject to the trusts and provisions herein-

Ultimate trusts.

Trusts of property not assigned to trustees.

Trusts of substituted property.

(*e*) This form of ultimate trust is adapted to real as well as personal estate, so that any after-acquired real estate of the wife may be settled by reference to these trusts without alteration. In the absence of this trust, the wife's undisposed of personalty would go to the husband surviving. As to whether he would take an estate by the curtesy in real estate settled to her separate use, see 3 Davidson Prec., 3rd ed., 101, note; *Cooper* v. *Macdonald*, 7 Ch. D. 288.

PREC. XII.

before declared and contained, concerning the sd original trust premises, or such of the same trusts and provisions as shall be applicable thereto, regard being had to the nature of the property: PROVIDED ALWAYS, and it is hereby agreed and declared, that it shall be lawful for the sd trustees or trustee, if they or he shall think fit, out of the annual income of the sd trust premises, to pay and discharge any rent, expenses, and outgoings for repairs, improvements, or insurance, or for taxes, rates, or assessments, or for any other reasonable or lawful purpose in respect of the sd leasehold premises: But the sd trustees or trustee shall not under any circumstances be concerned to see to the insurance of the sd leasehold premises, or the insurance, custody, or preservation of the sd personal chattels, or be responsible for the loss, destruction, or damage of the same respective premises: AND IT IS HEREBY also agreed and declared, that the sd balance now standing to the credit of the sd A. at her sd bankers, and the balance from time to time standing to her credit at the same or any other bankers, and also all the savings which may from time to time be made or derived by her from her separate estate, shall be deemed to be her separate property, and shall be subject to the trusts, powers, and provisions hereinbefore declared and contained concerning the property hereinbefore settled; *Agreement for settlement of A.'s other and after-acquired property*, p. 1082, *form* LV., *to be held* "upon, and subject to the trusts, powers, and provisions hereinbefore declared and contained concerning the sd trust premises hereinbefore settled, or such of the sd trusts, powers, and provisions as may be applicable, having regard to the nature of the property:" PROVIDED ALWAYS, and it is hereby agreed and declared, that the bonds, certificates, securities, and deeds, or other documents of title of, or relating to any investments or property of the sd A., which may be from time to time subject to the trusts and provisions of these presents, shall, at the option of the sd A., either be deposited with and held by the sd trustees or trustee, or

Power to trustees to pay rent &c. of leaseholds.

Balance at bankers.

After-acquired property.

Custody of bonds, &c.

with the bankers of the sd A., or any other person or persons whom she may appoint or nominate in that behalf, and that any stocks, funds, shares, or securities belonging to the sd A., which shall from time to time be subject to the trusts and provisions of these presents, shall, at the option of the sd A., be registered, entered, or placed in the names or name of the sd trustees or trustee, or (if the case will admit) in the name of the sd A., notwithstanding her coverture, as entitled thereto for her separate use, but all such bonds, certificates, deeds, and documents of title, stocks, funds, shares, and securities as aforesd (whether vested in, or held by or under the legal control of the sd trustees or trustee, or not), shall be and remain subject to the trusts, powers, and provisions aforesd; *Power of appointing new trustees to be vested in A.*, p. 1090, *form* LXIX.: PROVIDED ALWAYS, and it is hereby agreed and declared, that the sd trustees or trustee shall be under no liability or responsibility whatsoever with respect to any such stocks, funds, shares, securities, bonds, certificates, deeds, or documents of title as aforesd, which may not be vested in, or held by or under the legal control of the sd trustees or trustee; and that it shall not under any circumstances be incumbent on the sd trustees or trustee to intervene or take any steps whatsoever with respect to any property which may for the time being be subject to the trusts or provisions of these presents, unless they or he shall be required so to do in writing by the sd A.

Trustees' indemnity.

IN WITNESS, &c.

The Schedule above referred to.

[*Schedule in three parts.*]

XIII.

PREC. XIII.

SETTLEMENT, NOT UNDER SEAL, *on marriage, of the Wife's* PROPERTY *for her* SEPARATE USE, WITHOUT *Trustees.* VARIATIONS *where her* AFTER-ACQUIRED PROPERTY *is included, and where she has* LIBERTY *to carry on* TRADE (*f*). *A very short form.*

MEMORANDUM OF AGREEMENT made this —— day of —— BETWEEN A. of, &c., *husband*, of the one part, and B. of, &c., *wife*, of the other part, WITNESSETH that in consideration of an intended marriage between the sd A. and B., all the property to which the sd B. shall at the time of the sd intended marriage be [or to which she or the sd A. in her right shall at any time afterwards become] entitled, [and also the profits and earnings of the trade or business of —— now carried on by the sd B., which she is to be allowed to continue without any interference by the sd A.] shall belong to the sd B. for her separate use, independently of the sd A. [she indemnifying the sd A., his heirs, exors, and admors, out of her separate estate, against any debts or liabilities which she has already incurred, or may incur, in carrying on the sd trade or business.]

IN WITNESS, &c.

XIV.

PREC. XIV.

SETTLEMENT, *on Marriage, of* FURNITURE, *giving the* WIFE *an absolute Power of* DISPOSITION, *and subject thereto* IN TRUST *for* HER *for* LIFE, *with remainder to the* SURVIVOR *of herself and husband.*

Parties, A., *husband*, 1; B., *wife*, 2; C. and D., *trustees*, 3. WITNESSETH that in consideration of a marriage in-

Witnesseth.

(*f*) See in connection with this Precedent the Married Women's Property Act, 1870, 33 & 34 Vict. c. 93, ss. 2—6, and 11.

tended shortly to be solemnized between the sd A. and B., the sd B., with the consent of the sd A., doth hereby assign unto the sd C. and D., their exors, admors, and assigns, ALL THOSE articles of household or domestic use or ornament now belonging to the sd B., the particulars whereof are specified in the schedule hereto, [AND ALL other household effects which shall at any time during the sd intended coverture be acquired by the sd B.], UPON TRUST for her, the sd B., until the sd marriage, and afterwards UPON TRUST to dispose of and deal with the same in such manner as the sd B., notwithstanding coverture, shall by any writing under her hand, or by will or codicil, direct, AND IN DEFAULT of any and subject to every such direction, UPON TRUST to allow the sd B. to use and enjoy the same during the joint lives of herself and the sd A., for her separate use, independently of the sd A., AND AFTER the death of such one of them, the sd A. and B., as shall first die, upon trust for the survivor of them, the sd A. and B., for his or her absolute benefit: PROVIDED ALWAYS, and it is hereby agreed and declared, that the sd trustees or trustee shall not be bound to see to the preservation of, or be answerable for the loss or destruction of the sd effects and premises, or any part thereof.

PREC. XIV.

Assignment of furniture

and after-acquired furniture

as wife shall appoint.

In default for her separate use.

Remainder to survivor of husband and wife.

Receipt clause.

Trustees' indemnity.

IN WITNESS, &c. (*g*)

The Schedule above referred to.

[*Schedule of Furniture.*]

XV.

SETTLEMENT, *on Marriage, of* DIAMONDS *upon the Wife for her inalienable use.*

PREC. XV.

Parties, A., *husband*, 1; B., *wife*, 2; C., D., and E.,

(*g*) See *Farington* v. *Parker*, L. R. 4 Eq. 116.

PREC. XV. Recitals.

Wit-nesseth.

Trusts.

Power to reset dia-monds.

Provision in case of loss.

Power to trustees to interfere.

trustees, 3. *Recite intended marriage*, p. 1039: AND WHAS the sd B. is absolutely entitled to the diamonds and the settings thereof, the particulars whereof are specified in the schedule hereto: AND upon the treaty for the sd intended marriage it was agreed that the sd B. should assign the same to the sd C., D., and E., upon the trusts hereinafter declared concerning the same: NOW THIS INDRE, &c., *Assignment by B. with consent of A. of diamonds and settings, referring to schedule, to trustees*, p. 1045, *form* I.: AND IT IS HEREBY AGREED AND DECLARED that the sd C., D., and E., or the survivors or survivor of them, or the exors or admors of such survivor or other the trustees or trustee for the time being of these presents (hereinafter called the sd trustees or trustee), shall, after the sd intended marriage, allow the sd B. to have the personal use and enjoyment of the sd diamonds and settings during her life, but so that during her now intended or any future coverture, the same shall be for her separate use, and so that she shall not be able to sell or dispose of the same, or her life-interest therein, and after the death of the sd B. shall stand possessed of the same UPON TRUST, &c., *ulterior trusts*: PROVIDED ALWAYS, and it is hereby agreed and declared that the sd B. may from time to time have the sd diamonds re-set, but not so as to diminish the intrinsic value of the settings thereof, and that neither the sd B. nor the sd trustees or trustee shall be liable for the loss or destruction of the sd diamonds and settings, or any of them, and that the sd trustees or trustee shall not be bound to interfere as to, or to see to, the safe custody of the sd diamonds and settings: PROVIDED ALWAYS that it shall be lawful for the sd trustees or trustee, or any agent authorized by them or him, at the request of any person interested, or without any such request, if in their or his discretion they or he shall think it necessary for the safe preservation of the sd diamonds and settings, at any time or times to take possession of the same, and to retain such possession during such period as they or he shall think fit; *Short trustee clause*,

p. 1090, *form* LXIX., *omitting the part as to the indemnity of the trustees.* PREC. XV.

IN WITNESS, &c.

The Schedule above referred to.

[*Schedule.*]

XVI.

VOLUNTARY SETTLEMENT *of* PERSONALTY *on a Son (under age) and his Issue.* (*a*) PREC. XVI.

Parties, A., *settlor*, 1; B. and C., *trustees*, 2: WHAS the sd A. has transferred into the joint names of the sd B. and C., the sum of £—— Bank Annuities, to the intent that they and the survivor of them, and the exors or admors of such survivor, shall stand possessed thereof upon the trusts and with and subject to the powers and provisions hereinafter declared and expressed: [AND WHAS the settlement hereby made by the sd A. is intended by him to be irrevocable]: NOW THIS INDRE WITNESSETH that in consideration of the natural love and affection of the sd A. for his son D., and for divers other good causes and considerations, the sd A. doth hereby declare that the sd B. and C., and the survivor of them, and the exors or admors of such survivor, or other the trustees or trustee for the time being of these presents (hereinafter called the sd trustees or trustee) shall either permit the sd sum of £—— Bank Annuities to remain in its actual state of investment or,

Recitals.

Transfer of stock.

Settlement to be irrevocable.

Witnesseth.

Declaration of trust.

Investment.

(*a*) On the general subject of voluntary settlements, see 3 Davidson Prec., 3rd ed. 668, *et seq.*; as to the importance of expressing whether the settlement is to be revocable or not, see *ib.* 695, *et seq.*; *Hall* v. *Hall*, L. R. 8 Ch. 430; and as to the proper form of the power of revocation, see 3 Davidson, Prec., 698; as to the proper frame of a settlement made for the settlor's own protection against improvidence, &c., see *ib.* 697–8, and the cases of *Everitt* v. *Everitt*, L. R. 10 Eq. 405, *Prideaux* v. *Lonsdale*, 4 Giff. 159, 1 De G. J. & S. 433, *Phillips* v. *Mullings*, L. R. 7 Ch., 244, there referred to.

PREC. XVI.

with the consent of the sd A. during his life, and after his death of the sd D., if he shall be living and shall have attained the age of twenty-one years, and at all other times at the discretion of the sd trustees or trustee, sell the same or any part or parts thereof, and invest the proceeds of such sale in the names or name [or under the legal control] of the sd trustees or trustee in or upon, *Investments*, p. 1049, *form* IV., V., *or* VI.: AND SHALL pay the income of the sd sum of £—— Bank Annuities, and the investments from time to time representing the same, to the sd A. during his life, AND AFTER his death, in case the sd D. shall be under the age of twenty-one years, the sd trustees or trustee shall during his minority apply the whole or such part as they or he shall think fit of the income of the sd trust premises for or towards the maintenance or education of the sd D., and may either themselves or himself so apply the same, or may pay the same to the guardian or guardians of the sd D. without seeing to the application thereof: AND SHALL during such period as last aforesd accumulate the residue (if any) of the same income in the way of compound interest by investing the same, and the resulting income thereof, in or upon any such investments as are hereinbefore authorised; AND SHALL stand possessed of such accumulations, and of the investments thereof, and the income thereof, upon the same trusts, and with and subject to the same powers and provisions as are hereinafter declared and expressed concerning the original trust premises, and the income thereof respectively: AND AFTER the death of the sd A., and the majority of the sd D., the sd trustees or trustee shall pay the income of the sd trust premises to the sd D. and his assigns during his life; AND AFTER his death shall stand possessed of the same trust premises, and the income thereof, IN TRUST for all or such one or more exclusively of the others or other of the children, or remoter issue of the sd D. (such remoter issue to be born, and take vested interests within twenty-one years from the death of the sd D.) at such age or time or respective, &c., *remainder of trust for issue of D. shall by deed or will appoint,*

Trusts during life of father;

after his death, maintenance of son.

Accumulation.

After majority of son.

After death of son.

Power of appointment among son's issue.

p. 1057, *saying* "advancement either after the death of the survivor of the sd A. and D., &c.;" *Usual trust for children in default of appointment*, p. 1058, *form* XXIV., *mutatis mutandis; Hotchpot clause*, p. 1059, *mutatis mutandis; Power of advancement exercisable after death of A. and D., or in their or his lifetime, with their or his consent in writing*, p. 1060; *Maintenance clause after death of A. and D.*, p. 1060; *Accumulation clause*, p. 1060; *Power to D. to appoint life interest to a wife surviving him*, p. 1084, *form* LVIII., *mutatis mutandis; Ultimate trust in default of children attaining a vested interest for A., his exors, admors, and assigns*, p. 1061, *form* XXX., *mutatis mutandis; Trustee clause*, p. 1090, *form* LXIX.; [*Power of revocation*, p. 1091.] PREC. XVI.

IN WITNESS, &c.

XVII.

DECLARATION *of Trust of* SUM ADDED *to Settlement* (by ENDORSEMENT).(*a*) PREC. XVII.

THIS INDRE made, &c., BETWEEN the within-named A. of the one part, and the within-named B., C., and D. (*trustees*) of the other part: WHAS the sum of £—— £3 per cent. Reduced Bank Annuities, has been transferred by the sd A. to the sd B., C., and D., to the intent that the same shall be held upon the trusts, and with and subject to the powers and provisions hereinafter declared and contained concerning the same: NOW THIS INDRE WITNESSETH that it is hereby agreed and declared that the sd B., C., and D., and the survivors and survivor of them, and the exors or admors of such survivor or other the trustees or trustee for the time being of the within-written indre

Recitals.

Transfer of stock.

Witnesseth.

Declaration of trust.

(*a*) As to the importance in making an appointment under the powers in a settlement of referring specifically to a fund added to the settlement fund, see *Re Curteis' Trusts*, L. R. 14 Eq. 217.

PREC. XVII.

shall stand possessed of the sd sum of £—— £3 per cent. Reduced Bank Annuities, and the stocks, funds, and securities which may from time to time represent the same, and the income thereof, UPON SUCH TRUSTS, and with and subject to such powers and provisions as are in and by the within-written indre declared and contained of or concerning the within-mentioned sum of £—— Bank Annuities, and the stocks, funds, and securities which may from time to time represent the same, and the income thereof, or such of the same trusts, powers, and provisions, as may be subsisting or capable of taking effect, but not so as to increase or multiply charges, or powers of charging, to the intent that the fund hereby settled, shall be consolidated with, and form one fund with the trust premises comprised in, or now subject to the trusts of the within-written indre, and so that (so far as the sd A. can effect that object) the hotchpot clause in the within-written indre contained shall operate in the same manner as if the fund hereby settled had formed part of the trust funds originally comprised therein.

IN WITNESS, &c. (*b*)

(*b*) The following is a short form of a memorandum, not under seal, for the same purpose, which would ordinarily suffice. This document, as well as that in the text, would require an ad valorem stamp as a "settlement" on the value of the stock added to the settlement. "Memorandum.—I, the within-named A., hereby declare that the sum of £—— Bank Annuities was on the —— day of —— transferred by me into the names of the trustees of the within-written indre, to the intent that the same should form an addition to the trust funds thereby settled, and should be thenceforth held upon the trusts which would have been applicable thereto if the same had formed part of the sum of £—— Bank Annuities originally settled thereby. AS WITNESS my hand this —— day of ——."

XVIII.

DECLARATION *of* TRUST *of* MONEY SUBSCRIBED *for the* WIDOW *and* FAMILY *of a Man killed by an accident.* PREC. XVIII.

DECLARATION OF TRUST made the —— day of —— BETWEEN A., of, &c., and B., of, &c., of the one part, and C., of, &c., of the other part: WHAS there is now standing in the names of the sd A. and B. the sum of £—— Consolidated £3 per cent. Bank Annuities, arising from the investment of moneys raised by subscription for the benefit of the sd C., the widow of X., late a porter in the service of the —— Railway Company, who was killed by an accident while in their employ on the —— day of ——: NOW IT IS HEREBY AGREED between the sd A. and B. and the sd C. that the sd A. and B., and the survivor of them, and the exors or admors of such survivor shall henceforth stand possessed of the sd sum of £—— Bank Annuities, and the income thereof, UPON TRUST in the absolute and uncontrolled discretion of the sd trustees or trustee from time to time to pay and apply the income of the sd trust fund, or of so much thereof as shall not have been sold or disposed of as next hereinafter mentioned, to or for the benefit of the sd C., and her children or child for the time being in existence, or any one or more of such objects of this trust to the exclusion of the others or other of them, and UPON FURTHER TRUST in the like absolute and uncontrolled discretion from time to time to sell and dispose of all or any part of the capital of the sd trust fund, and to pay or apply the moneys arising therefrom to or for the maintenance, support, advancement, or benefit of the sd C., and her children or child, or any one or more exclusively of the others or other of them, as the sd trustees or trustee shall think proper.

Recitals.

Consols purchased with subscriptions.

Declaration of trust.

Income.

Capital.

IN WITNESS, &c.

SETTLEMENTS (REAL).(a)

RECITALS.

Short recital of absolute title to freeholds, copyholds, and leaseholds, by reference to schedules.

I. WHAS the sd, *settlor*, is seised of, or entitled to, the hereditaments specified in the first schedule hereto for an estate of inheritance in fee simple in possession [subject to the several charges and incumbrances hereinafter mentioned as affecting the same hereditaments, or some part or parts thereof], and is possessed of, or entitled to, the hereditaments specified in the second schedule hereto for an estate of inheritance to him and his heirs according to the customs of the several manors of which the same respectively are holden [subject, &c., *as above*], and is possessed of, or entitled to, the hereditaments specified in the third schedule hereto for the respective residues of the terms granted by the several leases specified in such schedule subject to the rents, covenants, and conditions reserved by and contained in such respective leases [and subject, &c., *as above*].

That premises are subject to jointure and portions.

II. AND WHAS the hereditaments intended to be hereby settled are subject to a jointure rent-charge of £—— a year, which will become payable to —— in case she shall survive her husband, and to powers of distress and entry, and a term of —— years limited to trustees, for securing the same, under or by virtue of an indre, dated, &c., and expressed, &c., *or*, "the will of ——, dated, &c.,

(a) See Davidson, Prec., vol. iii. Elphinstone's Introd. Conv. 322.

and proved, &c." [and a deed poll of appointment, under the hand and seal of ——, dated, &c.], and are also under or by virtue of the same indre, *or*, "will" [and deed poll], subject to and charged with such sum, not exceeding £——, as may in the event become raisable for the portions or advancement of the younger children or child of the sd —— by the sd ——, and to such annual sums as may become raisable by way of interest on the sd portions for the maintenance and education of such younger children or child, and which sum and interest are raisable under the trusts of a term of —— years limited to trustees for that purpose by the sd indre of settlement, *or*, "will" [and deed poll].

That premises are subject to leases.

III. And whas the sd hereditaments intended to be hereby settled are subject to the several leases and tenancies mentioned in the —— and —— schedules hereto as affecting the same respectively.

That premises are subject to mortgages.

IV. And whas the hereditaments intended to be hereby settled, or some part or parts thereof, are subject to the several mortgage debts mentioned in the first column of the second schedule hereto, and the interest thereon respectively, which respective mortgage debts and interest are severally secured by the respective indres mentioned in the second column of the sd second schedule hereto, and are now vested in the several persons named in the third column of the same schedule.

Recital of strict settlement where part of the property has been sold, &c.

V. Whas, by an indre, dated, &c., and expressed, &c. (being a settlement executed in consideration of the marriage, which was shortly afterwards solemnized, of the sd A. and K. his wife), the hereditaments described in the first schedule hereto were, with other freehold hereditaments, assured and limited after the sd marriage, subject to certain uses which have failed or determined, to the use of the sd L. and M. for the term of 99 years, upon the usual trusts for securing the annual sum of £—— by way of pin-money to the sd K., with remainder to the use of the sd A. and his assigns during his life,

with remainder to the use that, if the sd K. should survive the sd A., she should thenceforth during her life receive a rent-charge of £——, by way of jointure, secured by the usual powers of distress and entry, with remainder to the use of the sd N. and O. for the term of 200 years, upon the usual trusts for further securing the sd jointure rent-charge, with remainder to the use of the sd P. and Q., for the term of 1000 years, upon the usual trusts for securing for the portions of the younger child or children of the sd marriage the sum following, that is to say, if there should be but one such younger child, the sum of £——, and if there should be two or more such younger children, the sum of £——, with provisions for the maintenance, education, and advancement of such younger child or children, with remainder to the use of the first son of the sd A. by the sd K. in tail male, with several remainders over; And by the same indre the sd A. covenanted, if the sd marriage should take place, to surrender the hereditaments specified in the second schedule hereto, together with other copyhold hereditaments, to the use of the sd R. and S., their heirs and assigns, according to the customs of the several manors of which the same were respectively holden, upon trusts, and with and subject to powers and provisions corresponding with the uses, trusts, powers, and provisions thereinbefore limited and declared concerning the freehold hereditaments thereby settled, or as near thereto as the nature of the property would admit, but not so as to increase or multiply charges or powers of charging: And by the same indre the sd A. assigned the hereditaments comprised in or expressed to be demised by the several indres of lease specified in the third schedule hereto, together with other leasehold hereditaments, unto the sd R. and S., their exors, admors, and assigns, for the respective residues then unexpired of the several terms of years granted by the sd respective indres of lease, subject to the payment of the rents and the performance and observance of the covenants and agreements on the part of the respective lessees and conditions

by and in the same indres respectively reserved and contained, to be held after the sd marriage upon trusts, and with and subject to powers and provisions corresponding with the uses, trusts, powers, and provisions thereinbefore limited and declared concerning the freehold hereditaments thereby settled, or as near thereto as the nature of the premises would admit, but not so as to increase or multiply charges, or powers of charging, and so that the sd leasehold premises should not vest in any person thereby made tenant in tail male or in tail by purchase, unless he or she should attain the age of twenty-one years, but on his or her death under that age should devolve as if the same had formed part of the freeholds of inheritance thereby settled.

Disentailing assurance of freeholds preparatory to resettlement.

VI. WHAS by an indre, dated, &c., and expressed to be made, &c., and perfected by enrolment as a disentailing assurance, the sd, *tenant for life*, and the sd, *tenant in tail*, with the consent of the sd, *tenant for life*, did respectively grant unto the sd —— and his heirs the freehold hereditaments hereby settled, to hold the same unto the sd —— and his heirs, subject [to the charges and incumbrances hereinafter mentioned as affecting the same respectively, and] to the uses, estates, and powers, limited, declared, or created by the sd indre of settlement, with respect to the freehold hereditaments thereby settled, and then subsisting, which preceded the estate in tail [male] of the sd, *tenant in tail*, other than the estate thereby limited to the sd, *tenant for life*, during his life, and to the uses and estates limited or created, or to be limited or created, in exercise of such powers, but freed and discharged from all estates in tail [male or in tail] of the sd, *tenant in tail*, and all estates, rights, interests, and powers to take effect after the determination, or in defeasance of such estate or estates in tail [male or in tail] to such uses, for such estates, upon such trusts, and with and subject to such powers and provisions, as the sd, *tenant for life*, and, *tenant in tail*, should at any time or times thereafter, by any deed or deeds, with or without power of revocation and new appointment, jointly

direct, limit, or appoint, and in default of such appointment, to the uses therein mentioned.

Short recital of effect of settlement and disentailing assurance, comprising freeholds and copyholds.

VII. WHAS by the effect of an indre of settlement dated, &c., and of an indre dated, &c., and perfected by enrolment as a disentailing assurance, and of certain deeds, events, matters, and things, recited or implied in such indres or one of them, and of the exercise of certain powers in the sd indre of settlement contained, the manors or reputed manors, messuages, lands, and hereditaments of freehold tenure intended to be hereby settled now stand limited [subject to the charges and incumbrances hereinafter mentioned, as affecting the same premises respectively, and] subject to the uses and estates limited or created by the sd indre of settlement, or under the powers therein contained, which preceded the estate in tail male thereby limited to the sd ——, and which are now subsisting or capable of taking effect, and to the powers annexed to such preceding estates, To the use, *here set out limitations of disentailing deed*, and the messuages, lands, and hereditaments of copyhold tenure intended to be hereby settled now stand settled [subject to the charges and incumbrances hereinafter mentioned as affecting the same respectively] upon trusts and subject to powers and provisions corresponding with the uses, trusts, powers, and provisions to which the sd freehold premises are subject: AND WHAS the legal estate of the sd copyhold hereditaments is now vested in the sd K. and L., the present trustees of the sd indre of settlement.

Short recital of title to leaseholds under strict settlement.

VIII. AND WHAS the leasehold hereditaments specified in the —— schedule hereto are vested in the sd M. and N., *the trustees of the first settlement*, for the respective residues of the several terms granted by the several leases specified in such schedule, subject to the rents, covenants, and conditions reserved by and contained in such respective leases [and subject to the several charges or incumbrances hereinafter mentioned as affecting the same hereditaments, or some part or parts thereof respectively], upon, with, and subject to trusts, powers, and provisions corresponding as nearly as the

nature of the property admits with the uses, trusts, powers, and provisions to, upon, with, and subject to which the sd freehold hereditaments stood limited and settled under or by virtue of the sd indre of settlement, immediately before the execution of the sd indre of, &c., *the disentailing assurance*, and which preceded the estate in tail [male] by the sd settlement limited to the sd B., and subject thereto in trust for the sd B. absolutely.

State of family.

IX. AND WHAS there have been issue of the marriage of the sd A. and B. —— children only, viz., the sd ——, the eldest son, and —— younger children, —— of whom have attained their respective ages of twenty-one years, and the remaining —— are still infants and unmarried.

Short recital of interim dealings with the settled property.

X. AND WHAS divers sales and exchanges [and partitions] of portions of the estates and hereditaments, and enfranchisements of copyhold tenements holden of the several manors, subject to the uses and trusts of the sd indre of settlement, and enclosures of common and waste lands, have from time to time taken place since the date of the sd indre of settlement under the powers therein contained, or under statutory powers or authorities, and divers purchases of hereditaments and investments have from time to time been made with monies received upon such sales, exchanges, [partitions,] and enfranchisements, by means whereof divers portions of the hereditaments originally comprised in, or which have since from time to time become subject to the uses and trusts of the sd indre of settlement have been disposed of or parted with; And the hereditaments so purchased or received in exchange [or in partition], or allotted on such enclosures, and the stocks, funds, and securities so purchased, and which respectively remain undisposed of, are specified in the second schedule hereto, and the same respectively became, and were immediately before the execution of the indre next hereinafter recited, *disentailing assurance*, subject to such of the uses and trusts by the sd indre of settlement limited and declared as were applicable thereto, regard being had to the nature thereof

respectively: And whas the legal estate of such of the last-mentioned hereditaments as are of copyhold or leasehold tenure is now vested in the sd X. and Y., the present trustees of the sd indre of settlement, And the sd stocks, funds, and securities are now standing in the names or under the legal control of the sd X. and Y.

CLAUSES.

Limitation to joint appointment of father and son.

I. To such uses, upon such trusts, and with and subject to such powers and provisions as the sd, *father*, and, *son*, shall by any deed or deeds, revocable or irrevocable, appoint: And in default of, and subject to any such appointment, &c.

Limitation of a term.

II. To the use of the sd, *trustees*, their exors, admors, and assigns, for the term of —— years, to commence from ——, without impeachment of waste, upon the trusts, and with and subject to the powers and provisions hereinafter declared and contained concerning the same, and from and after the expiration or determination of the sd term, and in the mean-time subject thereto, and to the trusts thereof, To the use, &c.

Limitation of a life estate.

III. To the use of the sd —— and his assigns during his life [without impeachment of waste (*b*)], (*c*) and from and after his decease, To the use, &c.

(*b*) If desired, add here, "other than wilful or permissive waste in pulling down houses or buildings, or suffering the same

(*c*) Where the powers annexed to the life estate in a prior settlement are to be kept on foot, insert here, "In restoration, and by way of confirmation of the life estate of the sd ——, limited to him by the sd indre of settlement of the —— day of ——."

iv. In trust for the sd —— and his assigns during his life [and to permit him and them to have and enjoy all the rights, powers, and privileges of a legal tenant for life without impeachment of waste], and from and after his decease, In trust, &c.

The same where the legal estate is in the trustees.

v. To the use of the sd, *trustees*, and their heirs, during the life of the sd, *wife*, [*or*, the joint lives of the sd, *husband*, and, *wife*,] Upon trust, to receive the rents and profits of the sd hereditaments and premises hereby settled, and to pay the same to the sd, *wife*, for her sole and separate use, independently of the sd, *husband*, and of his debts, control, and engagements, and to permit the sd, *wife*, to manage the sd premises, and to have and enjoy all such rights, powers, and privileges, as if she were a feme sole and legal tenant for life [without impeachment of waste] of the same: And upon trust to do all such acts as may be necessary, or as the sd, *wife*, may require for the purposes aforesd [but so, nevertheless, that she shall not have power to dispose of the rents and profits of the sd premises by way of anticipation], and from and after the decease of the sd, *wife*, [*or*, of such one of them the sd, *husband*, and, *wife*, as shall first die]: To the use, &c.

Limitation to trustees during life of wife, or joint lives of husband and wife for wife's separate use.

vi. To the use that the sd, *son*, and his assigns, shall during the joint lives of himself and the sd, *father*, receive the yearly rent-charge of £ —— to commence from &c.,

Limitation of rent-charge to son during joint lives of himself and father.

to go to decay, and except waste in cutting ornamental timber, or any timber, or timber-like trees, otherwise than in a due and proper course of management, [and with the consent in writing of the sd, *trustees*, or the survivors or survivor of them, or the exors or admors of such survivor, or other the trustees or trustee for the time being of these presents, which consent it shall be wholly in the discretion of the sd trustees or trustee to give or withhold, without incurring any responsibility in that behalf],"

In the subsequent limitations without impeachment of waste, add, "save as aforesd."

and to be charged upon and issuing out of all the sd hereditaments and premises hereby settled, and to be considered as accruing from day to day, but to be payable quarterly, without any deduction on, &c., *specify days, or,* "on the usual quarter days," the first of such payments to be made on the —— day of —— next [at the end of three calendar months after the sd intended marriage], if the sd son shall then be living: AND TO THE FURTHER USE, &c.

Limitation of rent-charge to trustees in trust for separate use of wife.

VII. TO THE USE that the sd, *trustees,* their exors, admors, and assigns, shall during the life of the sd, *wife,* [*or,* the joint lives of the sd, *husband,* and, *wife,*] receive the yearly rent-charge of £——, commencing from the sd intended marriage, to be charged upon and issuing out of all the sd hereditaments and premises hereby settled, and to be considered as accruing from day to day, but to be payable quarterly, without any deduction on, &c., *specify days, or,* "on the usual quarter days," the first of such payments to be made on such of the sd days as shall happen next after the sd intended marriage, upon trust that the sd, *trustees,* and the survivor of them, and the exors or admors of such survivor shall pay the sd rent-charge to the sd, *wife,* for her separate use, independently of the sd, *husband,* without power of anticipation: AND TO THE FURTHER USE, &c.

Trust to raise and pay an annuity when the legal estate is in trustees. Variation when the annuity is to be paid to wife for her separate use.

VIII. UPON TRUST that the sd, *trustees,* and the survivor of them, and the heirs of such survivor shall during the life of the sd ——, *or,* "during the joint lives of the sd, *husband,* and, *wife,*" by and out of the rents and profits of the same premises, or by the sale of timber or minerals, or by mortgage of the same premises, or any of them, or by all or any of the means aforesd, raise the yearly sum of £——, commencing from the sd intended marriage, to be considered as accruing from day to day, but to be payable quarterly, without any deduction on, &c., *specify days, or,* "on the usual quarter days," the first of such payments to be made on such of the sd days as shall happen next after the sd intended marriage, and shall pay the same yearly sum to the sd ——, and his assigns, *or,* "to

the sd, *wife*, for her separate use, independently of the sd, *husband*, without power of anticipation," and subject to the payment of the sd annuity, UPON TRUST, &c.

IX. TO THE USE that if the sd, *wife*, shall survive the sd, *husband*, the sd, *wife*, and her assigns, shall thenceforth during her life receive the yearly rent-charge [*or*, rent-charges following, that is to say, if and so long as the sd, *husband's father*, shall be living, the yearly rent-charge of £——, and from and after his death the yearly rent-charge] of £—— [the sd yearly rent-charges, or such of them as may take effect], to be in full for her jointure, and in bar of all dower and freebench whatsoever, and to be charged upon, and issuing out of all the sd hereditaments and premises hereby settled, *or, as the case may be*, and to be considered as accruing from day to day, but to be payable quarterly, without any deduction [except succession duty], the first of such payments [as to the sd rent-charge of £——] to be made at the end of three calendar months after the death of the sd, *husband*, [if the sd, *wife*, and also the sd, *husband's father*, shall then be living, and as to the sd rent-charge of £——, to be made at the end of three calendar months after the death of the survivor of the sd, *husband*, and, *husband's father*], if the sd, *wife*, shall then be living.

Limitation of jointure rent-charge to wife. Variation where the rent-charge is to be increased after the death of the husband's father.

X. AND TO THE FURTHER USE that if the sd yearly rent-charge [any of the sd yearly rent-charges hereinbefore limited, and which shall take effect,] or any part thereof, shall at any time be unpaid for twenty-one days after any of the times hereby appointed for the payment thereof, then and so often it shall be lawful for the sd —— and his assigns [the person or persons entitled to the same rent-charge] to enter into and distrain upon the sd premises hereinbefore charged therewith, or any part thereof, and to dispose according to law of the distress or distresses then and there found, to the intent that thereby or otherwise the sd rent-charge so in arrear, and all costs and expenses occasioned by the non-payment thereof, may be fully paid and satisfied.

Power of distress to secure rent-charge. Variations for several rent-charges.

XI. AND TO THE FURTHER USE that if the sd rent-charge Power of

entry to secure rent-charge. Variations for several rent-charges.

[any of the sd rent-charges hereinbefore limited, and which shall take effect] or any part thereof, shall at any time be unpaid for forty days after any of the times hereinbefore appointed for the payment thereof, then and so often, although there shall not have been any legal demand made thereof, it shall be lawful for the sd —— or his assigns [the person or persons entitled to the same rent-charge] to enter into and upon, and to hold the sd premises hereinbefore charged therewith, or any part thereof, and to take the rents and profits thereof until such rent-charge and the arrears thereof due at the time of such entry, or afterwards to become due during his or their being in possession of the same premises, shall thereby or otherwise be fully paid and satisfied, together with all costs and expenses occasioned by the non-payment thereof, such possession, when taken, to be without impeachment of waste, and subject and charged as hereinbefore is mentioned, To THE USE, &c.

Limitation to sons or daughters successively in tail general or tail male.

XII. To THE USE of (*d*) the first and every other son [daughter] of the sd, *husband*, [by the sd, *wife*,] successively in remainder, one after the other, according to their respective seniorities, and the heirs [male] of their respective bodies, and in default of such issue, To THE USE OF (*d*), &c.

Limitation to daughters as tenants in common in tail general or tail male, with cross remainders.

XIII. To THE USE of (*d*) all the daughters of the sd, *husband*, [by the sd, *wife*,] and the heirs [male] of their respective bodies in equal shares as tenants in common: AND IF and so often as there shall be a failure of issue [male] of any such daughter, then, as well as to her original share as to any share or shares which shall have accrued to her, or to the heirs [male] of her body, by virtue of this present limitation, To THE USE of (*d*) the others of such daughters and the heirs [male] of their respective bodies, in equal shares, as tenants in common: AND IF there shall be a failure of issue [male] of all such daughters but one, or there shall be but one such daughter, then as to the entirety

(*d*) If the legal estate is in the trustees, say, "IN TRUST for."

of the same premises, To THE USE of (*e*) such one or only daughter, and the heirs [male] of her body, and in default of such issue, To THE USE of (*e*), &c.

Limitation to issue as the parents or survivor appoint.

XIV. To THE USE of (*e*) all or such one or more, exclusively of the others or other of the children or remoter issue of the sd intended marriage, such remoter issue to be born and take vested interests within twenty-one years from the death of the survivor of the sd *husband*, and, *wife* [or to the use of any other person or persons in trust for such children or child, or issue], for such estates or estate, interests or interest, and if more than one, in such shares, and with and subject to such charges, powers of charging, and other powers, provisions, and limitations over for the benefit of all or any one or more of such children or issue, and in such manner as the sd, *husband*, and, *wife*, shall by any deed or deeds, revocable or irrevocable, jointly appoint, and in default of and subject to any such appointment, then as the survivor of them shall in like manner, or by will or codicil, appoint; And in default of and subject to any appointment under either of the powers lastly hereinbefore contained, To THE USE of (*e*), &c.

Limitation to children as tenants in common in fee, with gift over on death under twenty-one, &c.

XV. To THE USE of (*e*) all the children of the sd, *husband*, [by the sd, *wife*,] their heirs and assigns, in equal shares as tenants in common (*f*): AND IF and so often as any such child being a son shall die under the age of twenty-one years, or being a daughter shall die under that age and without having been married, then as well as to the original share of the child so dying as to any share or shares which shall have accrued to him or her by virtue of this present limitation, To THE USE of (*e*) the others of such children, their heirs and

(*e*) If the legal estate is in the trustees, say, "IN TRUST for."

(*f*) This limitation, being a vested remainder subject to be divested on death under 21, &c., is to be preferred to a limitation to such of the children as shall attain twenty-one, &c., which is the usual form in the case of personal estate, notwithstanding that a contingent remainder in the latter form would now be protected, by the late Act 40 & 41 Vic. c. 33, from failure. Qy. however, as to the effect of the Act in such a case as *Brackenbury* v. *Gibbons*, 2 Ch. D. 417.

assigns, in equal shares as tenants in common: And if all such children but one shall die, being sons under the age of twenty-one years, or being daughters under that age and without having been married, or if there shall be but one such child, then as to the entirety of the sd premises, To the use of (*f*) such one or only child, his or her heirs and assigns: And if all such children shall die, being sons under the age of twenty-one years, or being daughters under that age and without having been married, then, To the use of (*f*), &c.

Ultimate limitation to uses of former settlement.

XVI. To the uses, upon the trusts, and with and subject to the powers and provisions which under or by virtue of the sd indre of settlement of, &c., were subsisting or capable of taking effect in the premises hereby assured immediately before the execution of the sd indre of the —— day of ——, *the disentailing deed*, [and were subsequent to the estate in tail [male], limited by the sd settlement to the sd ——], and so as to confirm or restore the same uses, trusts, powers, and provisions.

Name and arms clause, with variations (*g*).

XVII. Provided always, and it is hereby agreed and declared that every person who shall under the limitations hereinbefore contained become entitled as [legal or equitable] tenant for life, or tenant in tail [male or in tail] by purchase, to the possession or receipt of the rents and profits of the [*where there is a limitation to tenants in common, say*, "entirety of the"] hereditaments hereby settled, [other than a married woman] shall within one year after he [or she] shall so become entitled [*where infants may become entitled in possession, add*, "or being an infant, within one year after he or she shall attain the age of twenty-one years"]: [And also that the husband of every

(*f*) If the legal estate is in the trustees, say, "In trust for."

(*g*) For the ordinary form, see 3 Davidson, Prec. The form in the text, instead of shifting the legal estate from the tenant for life incurring the forfeiture, makes him a trustee for the person next entitled, which is considered to be preferable, the gift over being, from the nature of the case, not likely to take effect. As to clauses of the frame of that in the text, see 4 Davidson, Prec., 3rd ed., p. 462, note (*l*).

female so becoming entitled [not being a peer, or the eldest or only son of a peer] shall within one year after such female shall so become entitled, or marry, which shall last happen], assume the surname and arms of ——, and apply for a proper license to bear the arms of —— [either alone or quarterly with his or her own arms], unless in either of the sd cases such person shall be prevented from so doing by death: And if the person so entitled as aforesd [or, in the case of a married woman, her husband] shall refuse or neglect within such year to assume the surname and arms of ——, or to apply for such license as aforesd, or shall at any time afterwards disuse such surname or arms, Then, and in every such case, immediately after the expiration of such year, or such disuser, if the person so entitled as aforesd shall be a tenant for life, he [or in the case of a married woman, she and her husband] shall, during the remainder of the life of the person so entitled, but without prejudice to the uses, estates, or powers, preceding or over-riding the estate of the person entitled as aforesd, and to the uses and estates limited in exercise of such powers, hold (*h*) the rents and profits of the sd premises in trust for the person or persons who would for the time being be entitled to the same, if the person so entitled as aforesd were dead, and so that in such case all powers annexed to the estate of the person entitled as aforesd shall cease to be exercisable [and

(*h*) If the legal estate is in the trustees of the settlement, say, "Then, and in every such case, immediately after the expiration of such year or such disuser, the sd, *trustees*, their heirs and assigns, shall, but without prejudice, &c., *as in text*, hold the rents and profits of the sd premises in trust for the person or persons who would for the time being be entitled to the same if the person so entitled as aforesd being a tenant for life were dead, and being a tenant in tail [male or in tail] by purchase were dead, without having had issue inheritable under such limitation in tail [male or in tail], and so that in such case all powers, &c.," *as in text*.

that any appointment previously made by such person, being a married woman, of a rentcharge [life or any less interest] to her husband after her death under the power hereinafter contained shall be void, and that the enjoyment of any jointure rent-charge previously appointed by such person, [being a male,] in favour of his wife, or of any portions previously appointed by such person, [whether a male or female,] in favour of his or her younger children, under the respective powers hereinafter contained, shall not be accelerated], and if the person so entitled as aforesd shall be a tenant in tail [male or in tail] by purchase, then the estate in tail [male or in tail] of such person shall absolutely determine, and the hereditaments hereby settled shall immediately devolve on the person or persons next in remainder, as if such person were dead without having had issue inheritable under such limitation in tail [male or in tail.]

Trusts of term for raising pin-money. Variation where amount is to increase on death of husband's father.

XVIII. AND IT IS HEREBY AGREED AND DECLARED, that the sd hereditaments and premises are hereby limited to the sd, *trustees*, their exors, admors, and assigns, for the sd term of ninety-nine years, upon trust that the sd, *trustees*, or the survivor of them, or the exors or admors of such survivor, shall during the joint lives of the sd, *husband*, and, *wife*, by and out of the rents and profits of the same premises, or by the sale of timber or minerals, or by mortgage of the sd premises, or any of them, for all or any part of the sd term, or by all or any of the means aforesd, raise the annual sum of £—— [annual sums following, that is to say, so long as the sd, *husband's father*, shall be living, the annual sum of £——, and after his death the annual sum of £——], commencing from the sd intended marriage [or from the death of the sd, *husband's father*, as the case may be], clear of all deductions [except succession duty], and shall pay the same to the sd, *wife*, for her separate use, by way of pin-money, and so that she shall not have power to dispose thereof by anticipation, such annual sum [or sums] to be considered as accruing from day to day, but to be paid by quarterly payments, and the first of such

payments to be made at the expiration of three calendar months after the sd intended marriage, if the sd wife shall then be living: [And (*a*) shall also retain or pay all such moneys as shall be required to defray and satisfy the costs and expenses incurred in performing any of the trusts of the sd term, or otherwise in relation thereto, and shall permit the person or persons for the time being entitled in reversion immediately expectant upon the same term to the premises therein comprised to receive the surplus of the rents and profits of the same premises after payment and satisfaction of the annual sum [or sums] and costs and expenses aforesd.]

Trusts of term to secure rent-charge. Variations for several rent-charges.

XIX. AND IT IS HEREBY AGREED AND DECLARED, that the same premises are hereinbefore limited to the sd, *trustees*, their exors, admors, and assigns, for the sd term of 100 years upon trust, that (*b*) if and so often as the sd rent-charge [either of the sd rent-charges], or any part thereof [respectively], shall be unpaid for sixty days after any of the times hereinbefore appointed for the payment thereof, then the sd, *trustees*, or the survivor of them, or the exors or admors of such survivor, shall by and out of the rents and profits of the sd premises, or by the sale of timber or minerals, or by mortgage of the sd premises, or any part thereof, for all or any part of the sd term, or by all or any of the means aforesd, raise and pay the sd rent-charge of £—— [the rent-charge so in arrear], and all arrears thereof then due, or which shall during their or his continuance in possession accrue due, and all costs and expenses occasioned by the non-payment thereof, or otherwise relating thereto, and shall pay the surplus of the moneys to be raised as aforesd to the person or persons for the time being entitled in reversion immediately expectant on the sd term to the

(*a*) The words in this bracket may be omitted, if clause XXIII., p. 1163, is inserted.

(*b*) The declaration usually inserted here, that the trustees shall permit the reversioner to receive the rents till default in payment, is omitted, as this is sufficiently provided for by the clause at the end of the form, or by clause XXIII., p. 1163.

premises therein comprised: [AND (*c*) SUBJECT as aforesd, shall permit the rents and profits of the same premises, or such part or parts thereof as shall not for the time being be wanted for the purposes aforesd, to be received by the person or persons for the time being entitled to the same premises in reversion immediately expectant upon the sd term.]

Trusts of term for raising portions for younger children. Variations where the amount to be raised depends on the number of children, and where the husband's father takes the first life interest.

XX. AND IT IS HEREBY AGREED AND DECLARED, that the sd premises are hereby limited to the sd, *trustees*, their exors, admors, and assigns, for the sd term of 1000 years upon trust, if there shall be any younger child or children of the sd intended marriage, meaning thereby any child or children, who, being a son or sons, shall attain the age of twenty-one years, or being a daughter or daughters, shall attain that age or marry, other than any son or sons who before his or their respectively attaining the age of twenty-one years shall become (*d*) entitled [or any daughter or daughters, who before her or their respectively attaining that age or marrying, shall become indefeasibly entitled], whether in possession or remainder, under or by virtue of these presents to the sd hereditaments and premises hereby settled for the first estate in tail [male], then the sd, *trustees*, or the survivor of them, or the exors or admors of such survivor, shall after the death of the sd, *husband*, or in his lifetime at his request in writing [but during the lifetime of the sd, *husband's father*, not without his consent in writing], raise by mortgage of the sd premises, or any part thereof, for all or any part of the sd term, or by and out of the rents and profits thereof, or any part thereof, or by the sale of timber or minerals, or by all or any of the means aforesd, the sum of £—— [such sum of money as is hereinafter mentioned, that is to say, if there shall be but one such younger child, the sum of £——; and if there shall be two such younger children,

(*c*) The words in this bracket may be omitted, if clause XXIII., p. 1163, is inserted.

(*d*) Where the eldest son is not necessarily the first tenant in tail [male], say, "indefeasibly."

the sum of £——; and if there shall be three or more such younger children, the sum of £——], and shall hold the same sum in trust for all or such one or more, exclusively of the others or other of the sd younger children [or the issue of any such younger child or children, such issue to be born and take vested interests within twenty-one years from the death of the sd, *husband*], at such age or time, or respective ages or times, if more than one, in such shares, and with such future or other trusts for the benefit of any such younger child or children [or issue], and upon such conditions, with such restrictions, and in such manner as the sd, *husband*, (*e*) shall by any deed or deeds, revocable or irrevocable, or by will or codicil appoint: And in default of and subject to any such appointment, in trust for the sd younger children or child, if more than one, in equal shares as tenants in common: Provided always that no such younger child who [or whose issue] shall take any part of the sd sum of £—— [£—— or £——, as the case may be,] under any appointment in pursuance of the power hereinbefore contained, shall in default of appointment to the contrary have or be entitled to any share of the unappointed part of the sd sum without bringing the share or shares appointed to him or her [or to his or her issue] into hotchpot, and accounting for the same accordingly: And upon further trust that the sd trustees or trustee shall after the death of the sd, *husband*, [and the sd, *father*,] by any such means as aforesd, raise such annual sum not exceeding what the interest of the expectant portion or portions for the time being of any such younger child or children [or more remote issue], at the rate of £4 per cent. per annum would amount to, and shall apply the same for the maintenance and education or benefit of the younger child or children [or more remote issue], for the time being

Hotchpot clause.

Maintenance clause.

(*e*) If the wife takes a life interest, a power of appointment may be given to the husband and wife jointly, and subject thereto to the survivor, as in p. 1057, form xxi.; in which case consequential variations must be made in the rest of the clause.

entitled in expectancy (whether under any appointment or in default of appointment) to a portion or portions, or of such one or more exclusively of the others or other of them as the sd, *husband*, shall by any deed or deeds, revocable or irrevocable, or by will or codicil appoint, and in default of and subject to any such appointment, as the sd trustees or trustee shall think fit, and the sd trustees or trustee may either themselves or himself so apply the same, or may pay the same for such purpose to the guardian or guardians of such child or children [or more remote issue] without seeing to the application thereof: PROVIDED ALSO, and it is hereby agreed and declared that it shall be lawful for the sd trustees or trustee, after the death of the sd, *husband*, or in his lifetime at his request in writing [but not during the lifetime of the sd, *father*, without his consent in writing], to raise by any such means as aforesd any part or parts not exceeding altogether one moiety of the expectant presumptive or vested portion to which any such younger child [or more remote issue] shall be entitled, whether under any appointment or in default of appointment, and to apply the same for his or her advancement or benefit as the sd, *husband*, shall in manner aforesd appoint, and in default of and subject to any such appointment, as the sd trustees or trustee shall think fit: PROVIDED ALWAYS, that every advance so made shall be taken into account in estimating the total amount raisable for portions in either of the cases following, but not otherwise, that is to say, if the person for whose benefit such advance shall be made [or his or her parent] shall become entitled to a portion, or if but for this present proviso more than the sum of £——, *the maximum*, would become raisable for portions and advancements, in which latter case so much of the sum raisable for portions as shall form the excess shall sink into the estate and shall not be raised: PROVIDED ALSO, that it shall be lawful for the sd trustees or trustee, at any time during the lifetime of the sd, *husband*, at his request in writing, and after his death at their or his discretion

Advancement clause.

Provision as to events in which advances are to be considered as part of portions.

Power to raise total sum for portions before they are all payable.

[but not during the lifetime of the sd, *father*, without his consent in writing], when any portion or portions shall be payable, or when any sum shall be required for an advance, to raise, by all or any of the means aforesd, the whole or any part of the sum which in any possible event may become raisable for portions, and the sd trustees or trustee shall, after paying thereout any portion or portions and advance or advances then payable, hold the surplus of the moneys so raised upon trust to invest the same in their or his names or name in any of the investments in which the moneys arising from a sale of the hereditaments hereby settled under the power hereinafter contained are hereinafter (*f*) authorised to be invested, with power from time to time, at their or his discretion, to vary such investments, and shall stand possessed of such investments and the income thereof respectively as the primary fund for the payment of portions, maintenance, and advancement respectively, if any, which may subsequently become payable, in exoneration, except in case of deficiency, of the hereditaments hereby settled, and so that no further sum shall be raised under the trusts of the sd term of 1000 years, except in case of such deficiency, but no mortgagee or person subsequently advancing any money on the security of the sd term shall be bound to inquire as to the existence of such deficiency: And upon further trust, but subject to the trusts aforesd, either themselves or himself to apply the whole or any part of such investments and income respectively, which may not be required for the purposes aforesd, as if such investments had been made with moneys arising from any such sale as aforesd, or to transfer and pay the same respectively, or the moneys arising from the conversion of the whole or any part of such investments, to the trustees or trustee for the time being of the sd power of sale, to be applied by them or him in manner aforesd: PROVIDED ALSO that in case the sd, *husband*, shall require any

(*f*) Where the details of the power of sale are left to the statute, substitute for "hereinafter," "by law."

portion or portions or any advance or advances to be raised in his lifetime, he shall be bound to keep down the interest on the sum or sums so raised during his life; [(*g*) PROVIDED ALWAYS, and it is hereby agreed and declared that, subject to the trusts hereinbefore declared, and subject to the right of the sd trustees or trustee to raise by any of the means aforesd all costs and expenses incurred in the execution of the trusts of the said term of 1000 years, the rents and profits of the sd premises comprised in the sd term, or so much thereof as shall not be required for the purposes aforesd, shall be taken and received by the person or persons entitled to the sd premises in reversion immediately expectant on such term].

Trusts of term for securing payment of premiums on policies.

XXI. AND IT IS HEREBY AGREED AND DECLARED that the sd premises are hereby limited to the sd, *trustees*, their exors, admors, and assigns, for the sd term of 100 years, if the sd —— shall so long live, upon trust that the sd, *trustees*, or the survivor of them, or the exors or admors of such survivor, shall by and out of the rents and profits of the sd premises, or (if such rents and profits shall be insufficient, but not otherwise) by sale of timber or minerals, or by mortgage of the same premises or any part thereof for all or any part of the same term, or by all or any of the means aforesd, raise and pay the annual premiums and other sums, if any, necessary for keeping on foot or restoring the sd policies of assurance and any substituted policy or policies to be effected as hereinafter is provided, or for effecting any such substituted policy: And it is hereby agreed that if the sd policies, or any of them, or any such substituted policy as aforesd, shall become void, then and so often as the same shall happen, the sd trustees or trustee, shall forthwith effect a new policy or policies of assurance on the life of the sd ——, in the names or name of the sd trustees or trustee in such sum or sums of money as would have been payable under the

(*g*) The words in this bracket may be omitted, if clause XXIII., p. 1163, be inserted.

policy or policies which shall have become void if the sd —— had then died: And that every such substituted policy, and the moneys to become payable thereunder, shall be held and applied upon the trusts, and for the purposes hereby declared and expressed concerning the sd original policies and the moneys to become payable thereunder: Provided always that if any of the sd original policies, or any such substituted policy as aforesd, shall become void, and the sd —— shall refuse or neglect to do all such things as shall be necessary or proper to enable the sd trustees or trustee to effect a new policy or policies in manner aforesd, in such office or offices as the sd trustees or trustee shall think proper, or if the life of the sd —— shall not then be insurable, or shall be insurable at a premium more than double the premium for the insurance of a healthy male of his then age, the sd trustees or trustee shall during the whole or such part of the residue of the life of the sd —— as shall elapse before the accumulations hereinafter directed shall amount to the sum hereinafter mentioned, raise out of the rents and profits of the sd premises the annual sum of £—— [such annual sum of money as shall be equal to double the yearly premium required for insuring in such office as they or he shall select the payment on the death of a healthy male of the same age as the sd —— at the time of such policy becoming void of the sum which would have been payable on the same if he had then died], and shall accumulate the sd annual sums at compound interest by investing the same and the resulting income thereof in any of the investments hereinafter (*h*) authorised in the case of moneys arising from a sale under the power hereinafter contained of any part of the sd hereditaments and premises, with power from time to time to vary such investments at discretion, until the death of the sd ——, or until such accumulated fund shall amount in value to the sum which would have been payable under

(*h*) Where the details of the power of sale are left to the statute, substitute for "hereinafter," "by law."

the policy or policies which shall have become void if the sd —— had died at the time of the avoidance thereof, which shall first happen: And it is hereby agreed and declared that if the sd trustees or trustee shall receive any moneys under or by virtue of the sd original policies, or any of them, or any such substituted policy as aforesd, or if they or he shall make any accumulation under the trusts hereinbefore declared, they or he shall hold the moneys received under or by virtue of the sd policies or policy, and any such accumulated fund respectively (*a*), upon such trusts and subject to such powers and provisions as would have been applicable thereto respectively if the same had arisen from a sale of part of the sd hereditaments and premises under the power of sale hereinafter contained, or from an investment of such proceeds of sale.

Trusts of term for accumulation at compound interest(*b*).

XXII. AND IT IS HEREBY AGREED AND DECLARED that the sd premises are hereby limited to the sd, *trustees*, their exors, admors, and assigns, for the sd term of twenty-one years upon trust, that the sd, *trustees*, or the survivor of them, or the exors or admors of such survivor, shall by and out of the rents and profits of the same premises, or by the sale of underwood or timber which ought to be cut in a proper course of management, yearly and every year during the same term raise the sum of £——, and shall accumu-

(*a*) It is conceived that in the usual case where the person during whose life the accumulations are directed is the settlor, this is not within the restrictions of the Thellusson Act, 39 & 40 Geo. III., c. 98. Where this form is used, it is doubtful whether any subsequent directions for accumulation, except for the purpose of paying debts, or raising portions, would not be invalid, as offending against the Act: *Wilson* v. *Wilson*, 1 Sim. N. S. 288.

(*b*) As, although an indefinite trust for accumulation for the payment of debts not offending against the rules of law against perpetuities is not obnoxious to the Thellusson Act, 39 & 40 Geo. III., c. 98, it is liable to be defeated by the debts being satisfied *aliunde*, as out of the proceeds of a sale (*Tewart* v. *Lawson*, L. R. 18 Eq. 490); the safer course appears to be to limit the accumulation to the term of twenty-one years, as in the text, so that it will be good whether the debts are paid or not. See note (*a*), above.

late the same at compound interest by investing the same and the resulting income thereof in any investments hereinafter (*c*) authorised in the case of moneys arising from a sale of any part of the sd hereditaments and premises under the power of sale hereinafter contained, with power from time to time to vary such investments at discretion until the termination of the sd term, and shall then hold and apply such accumulated fund as if the same had arisen from the investment of moneys arising from a sale of any of the hereditaments hereby settled under the power of sale aforesd.

General provision as to surplus rents of terms.

XXIII. PROVIDED ALWAYS and it is hereby agreed and declared, that subject to the trusts hereinbefore declared concerning each of the sd terms hereinbefore limited, and to the rights of the trustees and trustee for the time being of such respective terms to raise by any of the means aforesd and pay or reimburse themselves or himself all costs and expenses incurred in relation to the sd several trusts, the rents and profits of the hereditaments and premises comprised in each such term or such part thereof as shall from time to time remain after satisfying the sd trusts, shall be taken and received by the person or persons for the time being entitled to the same premises in reversion immediately expectant upon such respective term.

Power to husband to jointure an after-taken wife.

XXIV. PROVIDED ALWAYS and it is hereby agreed and declared that if the sd, *husband*, shall survive the sd, *wife*, it shall be lawful for him the sd, *husband*, at any time, either before or after his marriage with any other woman, by deed revocable or irrevocable, or by will or codicil, to appoint to any such woman in the event of her surviving him, for her life or any less period, a rent-charge or rent-charges by way of jointure not exceeding the annual sum of £——, [not exceeding during the life of the sd, *husband's father*, the annual sum of £——, and after his death the annual sum of £——, *or*, "but not to take effect during the life of the sd, *father*, without his consent in writing,"] to be

(*c*) See p. 1161, note (*h*).

charged upon all or any of the hereditaments hereby settled, and to be payable without any deduction [except succession duty] at such times and in such manner as the sd, *husband*, shall direct, with the usual powers and remedies for securing the same by distress and entry, and receipt of the rents and profits of the same premises, and also to appoint or authorise such woman to appoint the premises so charged to any person or persons for any term of years, to commence from the time appointed for the commencement of the sd rent-charge, or from any subsequent time, with or without impeachment of waste, upon trusts for better securing the same rent-charge or rent-charges, and it is hereby agreed and declared that the power of jointuring lastly hereinbefore contained may be exercised as often as the sd, *husband*, shall marry.

Power to subsequent tenants for life to charge jointures.

XXV. PROVIDED ALWAYS and it is hereby agreed and declared that it shall be lawful for each [male] person hereby made tenant for life of the hereditaments hereby settled other than the sd, *husband*, [and the sd, *father*,] either before or after he shall become entitled to the possession or receipt of the rents and profits of the same premises, but subject and without prejudice to the uses, estates, and powers preceding or overriding the estate of the person exercising this present power, and to the uses and estates limited or created in exercise of such powers, at any time either before or after his marriage with any woman by deed, &c., *as in preceding form, substituting for*, "*husband*," "the person exercising this power."

Power to female tenants for life to limit rent-charges to husbands.

XXVI. PROVIDED ALWAYS, and it is hereby agreed and declared that it shall be lawful for each female hereby made tenant for life of the hereditaments hereby settled, either before or after she shall become entitled to the possession or receipt of the rents and profits of the same premises, but subject and without prejudice to the uses, estates, and powers preceding or overriding the estate of the person exercising this present power, and to the uses and estates limited or created in exercise of such powers, at any time

either before or after her marriage, by deed revocable or irrevocable, or by will or codicil, to appoint to her husband or intended husband for his life or any less period a rent-charge or rent-charges not exceeding, &c., *as in form* XXIV, *mutatis mutandis, and substituting for,* "*husband,*" "the person exercising this power."

Power to husband to charge portions for children of a subsequent marriage.

XXVII. PROVIDED ALWAYS, and it is hereby agreed and declared that if the sd, *husband,* shall survive the sd, *wife,* it shall be lawful for him at any time either before or after his marriage with any other woman, by deed revocable or irrevocable, or by will or codicil [but subject and without prejudice to the sd several terms hereinbefore limited, and to the trusts thereof], to charge all or any of the sd hereditaments and premises hereby settled with the payment for the portion or portions of his younger child or children by any such after-taken wife, meaning thereby any child or children, who, being a son or sons, shall attain the age of twenty-one years, or being a daughter or daughters, shall attain that age or marry, other than any son or sons who, before his or their respectively attaining the age of twenty-one years, shall become (*c*) entitled [or any daughter or daughters who, before her or their respectively attaining that age or marrying, shall become indefeasibly entitled], whether in possession or remainder, to the sd hereditaments and premises hereby settled for the first estate in tail [male or in tail] [or the issue of any such younger child or children, such issue to be born and take vested interests within twenty-one years from the death of the sd, *husband,*] of the sum of £—— [of any sum not exceeding in the different events hereinafter specified the different sums hereinafter mentioned, that is to say, if there shall be but one such younger child the sum of £——, if there shall be only two such younger children the sum of £——, and if there shall be three or more such younger children the sum of

(*c*) Where the husband's eldest son is not necessarily the first tenant in tail [male], say, "indefeasibly."

£——], such sum to be an interest vested in such younger child or children [or issue], or such one or more exclusively of the others or other of them, at such age or time, or respective ages or times, if more than one, in such shares, and with such future or other trusts for the bene fit of any such younger child or children [or issue], upon such conditions, with such restrictions, and in such manner, and subject to such powers of appointment by the sd, *husband*, or any other person, and to such provisions for the advancement of such younger child or children [or issue], at the discretion of any trustees or trustee or otherwise, and to such other powers and provisions for the benefit of such younger child or children [or issue], as the sd, *husband*, shall think fit [but not to be raised or payable during the lifetime of the sd, *husband's father*, without his consent in writing], and also in like manner to charge the sd premises, or any part thereof [but subject and without prejudice as aforesd], with such annual sum not exceeding what the interest, at the rate of £4 per cent. per annum, of the expectant portion or portions of any such younger child or children [or issue] would amount to, such annual sum to be clear of all deductions, except succession duty, and to commence from such time or times [but not during the lifetime of the sd, *husband's father*, without his consent in writing], and to be applied in such manner, at the discretion of such trustees or trustee or otherwise, for the maintenance and education of the younger child or children [or issue] for the time being entitled in expectancy to a portion or portions, or of such one or more of them as the sd, *husband*, shall think fit, And also in like manner to charge the sd premises, or any part thereof [but subject and without prejudice as aforesd], with the payment either in his own lifetime or after his death [but during the lifetime of the sd, *husband's father*, not without his consent in writing] of such part not exceeding altogether one moiety of the then expectant or presumptive or vested portion of any such younger child [or issue] as the sd, *husband*, shall during his life, or any trustees or trustee shall after his death, in their or his discretion, think

fit, and to direct the same to be applied for the advancement or benefit of such younger child [or issue] in such manner as the sd, *husband*, shall during his life, or such trustees or trustee shall after his death think fit, but so that every advance so made shall be taken into account in determining the total amount to be raised for portions under this present power in case the child [or issue] for whose benefit such advance shall be made [or his or her parent] shall become entitled to a portion, or if but for this present proviso more than the sum of £——, *the maximum*, would be raisable for portions and advancements, in which latter case so much of the sum raisable for portions as shall form the excess shall sink into the estate and shall not be raised; AND ALSO to appoint the premises so charged as aforesd [but subject and without prejudice as aforesd] to any person or persons for any term of years commencing from the decease of the sd, *husband*, with or without impeachment of waste, upon usual trusts for raising the principal and annual sum or sums so charged as aforesd for portions, maintenance, education, and advancement, and the costs and expenses to be incurred in the execution of the trusts of such term.

Power to limit a term for securing portions.

XXVIII. PROVIDED ALWAYS, and it is hereby agreed and declared, that it shall be lawful for every person hereby made [legal or equitable] tenant for life of the sd hereditaments and premises hereby settled other than the sd, *husband*, [and the sd, *husband's father*,] either before or after he [or she] shall become entitled to the possession or receipt of the rents and profits of the same premises, but subject and without prejudice to the uses, estates, and powers preceding or overriding the estate of the person exercising this present power, and to the uses and estates limited or created in exercise of such powers, at any time, either before or after his [or her] marriage, by deed revocable or irrevocable, or by will or codicil, &c., *continue, as in preceding form, mutatis mutandis, substituting for* "*husband*," "the person exercising this power," *and saying*, "the younger child or children

Power to subsequent tenants for life to charge portions. Variations for female tenants for life.

of the person exercising this power by such marriage," *and*, "become indefeasibly entitled, &c."

Proviso that a charge of a rent-charge or portions shall not take effect unless the person charging, or his issue, becomes entitled in possession.

XXIX. PROVIDED ALWAYS that no charge of any rent-charge, or portions, or sums for maintenance or advancement, which may be appointed or charged under the respective powers hereinbefore contained, shall take effect unless either the person charging the same shall be, or become, or unless some of his [or her] issue shall become, or if of full age would have become, entitled (*d*) to the possession or receipt of the rents and profits of the premises charged therewith.

Proviso limiting total amount chargeable for rent-charges and portions.

XXX. PROVIDED ALWAYS that the same premises, or any part thereof, shall not by virtue of any appointments or charges made under the respective powers hereinbefore contained, be at any one time subject to the payment of rent-charges exceeding in the whole, inclusive of the rent-charge hereby limited to the sd, *wife*, if payable, the annual sum of £——, or ultimately become subject to the payment of any greater sum in the whole for portions, inclusive of the sum hereby charged for portions of the younger children of the sd, *husband*, than the sum of £——, so that if by the exercise of the same respective powers, the said premises, or any part thereof, would, but for this present proviso, have been charged with the payment of rent-charges or portions to a larger amount, the charge or charges by which such excess shall be occasioned, or such part thereof respectively as shall form such excess, but as regards such excess of rent-charges only during the continuance of such excess, shall sink into the premises charged therewith and not be raisable, and the same rent-charges and portions respectively shall have preference and priority according to the order of

(*d*) When by the effect of a name and arms' clause, a remainderman may become entitled to the receipt of the rents and profits, subject to be ousted by the birth of a person higher in order of limitation, add the words, "for an estate not liable to be defeated by the birth of any other person."

limitation of the estates of the persons by whom the same shall respectively be charged.

Power to female tenants for life to appoint life interests to surviving husbands.

XXXI. PROVIDED ALWAYS, and it is hereby agreed and declared, that it shall be lawful for every female hereby made tenant for life of the hereditaments hereby settled, either before or after she shall become entitled to the possession or receipt of the rents and profits of the same premises, but subject and without prejudice to the uses, estates and powers preceding or overriding the estate of the person exercising this present power, and to the uses and estates limited or created in exercise of such powers, at any time, either before or after her marriage, by deed revocable or irrevocable, or by will or codicil, to appoint the sd hereditaments, or any part or parts thereof, to her husband or intended husband and his assigns for his life, or any less period, in remainder expectant on her decease, subject or without being subject to impeachment of waste; AND it is hereby declared that any man to whom the whole, or any part or parts of the sd hereditaments, shall be appointed as last aforesd, shall not exercise the powers hereby given to a tenant for life of jointuring and charging portions, but shall, as to the premises so appointed to him for his life or any less estate of freehold, be considered, during the continuance of such estate, as a tenant for life under the limitations herein contained for the purpose of exercising any other power hereby given to a tenant for life: AND it is hereby declared that the power lastly hereinbefore contained may be exercised as often as any person entitled to exercise the same shall marry: Provided always that no appointment under the power lastly hereinbefore contained shall take effect, unless either the person making the appointment shall be or become, or some of her issue shall, or, if of full age and if no such appointment had been made, would have become, entitled (*e*) to the possession or receipt of the rents and profits of the premises comprised in such appointment.

Power to

XXXII. PROVIDED ALWAYS, and it is hereby agreed and

(*e*) See note, last page.

charge a gross sum.

declared that it shall be lawful for the sd —— by any deed or deeds, revocable or irrevocable, or by will or codicil [but subject to the sd terms of —— years and —— years, and the trusts thereof,] to charge all or any part of the sd premises hereby settled with the payment of any sum or sums of money not exceeding in the whole £——, together with interest thereon at a rate not exceeding £5 per cent. per annum, for the benefit of himself or any other person or persons, and for such purposes in all respects as he may think fit.

Power to limit a term for securing a rent-charge, or gross sum charged, or authorised to be charged.

XXXIII. And to the further use, [*or*, Provided always, and it is hereby agreed and declared,] that it shall be lawful for the sd —— [for every person to whom a rent-charge or rent-charges is or are hereby limited, or to whom a power of charging the sd hereditaments and premises hereby settled, or any part thereof, with a rent-charge or rent-charges, or any principal moneys and interest, is hereby given] to appoint all or any of the premises charged as aforesd [charged with any such rent-charge or rent-charges, or principal moneys and interest] to any person or persons for any term or terms of years, with or without impeachment of waste, to commence from —— [from the determination or failure of all the freehold estates hereby limited, which shall precede in order of limitation the rent-charge or estate of the person exercising this power], upon such usual trusts for raising the rent-charge [or rent-charges, or principal moneys and interest] charged [or to be charged] as aforesd, and all costs and expenses in relation thereto, as the sd —— [as such person] shall think proper.

Power to trustees to manage during minorities. Variations.

XXXIV. Provided always, and it is hereby agreed and declared that if any person who would but for this present provision for the time being be entitled to the possession or receipt of the rents and profits of the sd hereditaments and premises hereby settled (*e*) as tenant for life or in tail [male, or in tail] by purchase, shall [being a male] be under the

(*e*) Where there are limitations to tenants in common in fee, or in tail, insert here, "or of any undivided part or share thereof."

age of twenty-one years [or being a female be under that age and a spinster], the sd, *trustees*, or the survivor of them, or the exors or admors of such survivor shall enter into the possession or receipt of the rents and profits of the same premises (*g*), and shall, during the minority [or minority and spinsterhood as the case may be] of such person, continue in such possession or receipt, and manage or superintend the management of the same premises (*g*) [(*h*) with power to cut timber and underwood for sale, repairs or otherwise, and to open and work mines, quarries, and

where there are limitations to females or tenants in common, and where an undivided share is settled. (*f*)

(*f*) The following is a short form of the minority clause for use where brevity is desired:—"PROVIDED ALWAYS, and it is hereby agreed, that during the minority, and in the case of a female spinsterhood, of any tenant for life or in tail [male or in tail] by purchase in possession of the sd hereditaments and premises [or any undivided share thereof] the sd, *trustees*, or the survivor of them, or the exors or admors of such survivor shall take and retain possession, or receive the rents and profits of the sd premises [or of such undivided share thereof], and manage the same with the same powers in that behalf, as if they or he were absolutely entitled thereto; and shall, after paying all outgoings and expenses apply, at their or his discretion, the whole or any part of the net rents and profits of the sd premises [or undivided share] for the maintenance and education of such minor, with power to pay the same to his or her guardian or guardians for the purpose aforesd without seeing to the application thereof; and shall apply the surplus if any thereof as if the same had arisen from a sale of the sd premises under the power of sale hereinafter contained, but so that such surplus or the investments thereof may be applied for the maintenance or benefit of such minor in any subsequent year or years."

(*g*) For tenants in common, say, "or of such undivided part or share thereof."

(*h*) The words in this bracket may usually be omitted where brevity is desired.

brickfields, and to erect, pull down, and repair houses or other buildings, and to drain and make roads and fences, and otherwise to improve all or any of the sd premises, and to insure houses and buildings against loss or damage by fire, and generally to deal with the sd premises as if they or he were the absolute owners or owner thereof] without being responsible for any loss occasioned thereby (*a*), and shall, out of the rents and profits of the sd premises (*b*) [including the produce of timber, underwood, mines, quarries or brickfields] pay the expenses incurred in such management or otherwise in respect of the premises, and any annual sums of money and the interest on any principal sums of money for the time being charged on the same premises or any part thereof (*c*), and in the next place pay and apply such sum or sums of money, as the sd trustees or trustee shall think fit having regard to the age of such minor, in or towards his [or her] maintenance, education, or advancement, and the sd trustees

(*a*) Where an undivided share is settled, say, "And may exercise the sd powers of management over the undivided part or share hereby settled alone, or in conjunction with the person or persons entitled to, or having power in that behalf over the other undivided part or share, or parts or shares of and in the sd hereditaments and premises, and so that in the latter case any moneys received or outgoings paid or incurred may be apportioned after the same shall have been received, paid, or incurred [and that notwithstanding that any of the sd trustees, or a sole trustee, may be entitled to, or interested in, any of the other undivided parts or shares]." As to the words in brackets, see above, p. 1075, note (*f*). The same addition should be made where there are limitations to tenants in common, with the substitution of "the undivided part or share, parts or shares belonging to any minor or minors," for "the undivided part or share hereby settled."

(*b*) For tenants in common, say, "or of such undivided part or share thereof as aforesd."

(*c*) For an undivided share or tenants in common, say, "or a proportionate part of such expenses, annual sums, and interest, as the case may require."

or trustee may either themselves or himself so pay or apply the same, or may pay the same to the guardian or guardians of such minor for the purpose aforesd without seeing to the application thereof: And shall accumulate the residue of the sd rents and profits [and produce] in the way of compound interest, by investing the same and the resulting income thereof in or upon any investments hereinafter (*d*) authorised in the case of moneys arising from a sale of any part of the sd hereditaments and premises under the power of sale hereinafter contained, with power from time to time to vary such investments at discretion, and shall stand possessed of the sd residue of the sd rents and profits [and produce], and the accumulations thereof (*e*), and the investments representing the same, upon the trusts following, that is to say, if the person during whose minority the same shall have been accumulated shall [being a male] attain the age of twenty-one years [or being a female attain that age or marry] then upon trust for such person his [or her] exors or admors as personal estate, but if such person [being a male] shall die under the age of twenty-one years [or being a female shall die

(*d*) Where the details of the power of sale are left to the statute substitute for "hereinafter," "by law."

(*e*) Where there is a prior trust for accumulation for any purpose other than the payment of debts or raising portions for younger children, the provisions in the text would, it is conceived, offend against the Thellusson Act, 39 & 40 Geo. III., c. 98, see above, p. 1162, note (*a*) To meet such a case, the following trust, which appears to be free from objection, might be substituted for the rest of this form :—"Upon trust to apply the same or any part thereof in or towards payment of any principal moneys now charged, or at any time previously to the determination of such minority or spinsterhood as aforesd to be charged under any power herein contained for charging portions, and which shall have become payable: And subject thereto upon trust for the person during whose minority the sd rents and profits shall have been accumulated, whether he or she shall attain the age of twenty-one years, or in the case of a female marry, or not, his or her exors, admors and assigns."

under that age and without having been married] then upon the trusts and with and subject to the powers and provisions [(*f*) hereinafter declared and contained concerning] the moneys to arise from a sale of the sd premises under the power hereinafter contained, and the investments thereof, but so that such accumulations may at any time be applied for the benefit of any such minor as if the same had been rents and profits arising in the year in which they shall be so applied.

Power to lease for twenty-one years.

XXXV. AND IT IS HEREBY AGREED AND DECLARED, that it shall be lawful for the sd, *husband*, during his life, and for the sd, *trustees*, or the [survivors or] survivor of them, or the exors or admors of such survivor, during the minority of any son [or daughter] of the sd intended marriage, who, if of full age, would be entitled to the possession or receipt of the rents and profits of the hereditaments hereby settled [(*a*) or of any undivided share or shares thereof] (*b*), to demise (*c*) all or any of the sd hereditaments for any term of years, not exceeding twenty-one years, to take effect in possession, or within six calendar months from the date of the lease [(*d*) so

(*f*) Where the details of the power of sale are left to the statute, substitute for the words bracketed the words, "applicable to."

(*a*) These words should be inserted where there is a limitation to tenants in common.

(*b*) If the deed contains several leasing powers, it may be found convenient to continue from this point as follows, "to exercise over the whole or any part of the same premises [or, according to circumstances, of any such undivided share or shares thereof] the powers following, that is to say, FIRST, a power to demise, &c., *as in the text;* SECONDLY, a power to demise, &c."

(*c*) It is submitted that the word "demise" which is shorter than the more usual phrase, "appoint by way of lease," is not open to objection, and it has the advantage of being adapted to the case where the legal fee is in the trustees.

(*d*) Where brevity is of importance, substitute "at rack-rent" for the words in this bracket. It is not considered necessary, in the case of a lease for twenty-one years, that it should be made a condition of the validity of the lease that the lessee should execute a counterpart.

as there be reserved in every such lease the best yearly rent or rents to be incident to the reversion that can be reasonably obtained, without taking anything in the nature of a fine or premium, and so as there be contained in every such lease a condition of re-entry for non-payment within a reasonable time, to be therein specified, of the rent or rents thereby reserved.]

The same, where there are various limitations for life and in tail or fee.

XXXVI. AND IT IS HEREBY AGREED AND DECLARED, that it shall be lawful for (*e*) every person hereby made tenant for life of the sd hereditaments hereby settled, when he [or she] shall be entitled to the possession or receipt of the rents and profits of the same premises, and also for the sd, *trustees*, or the [survivors or] survivor of them, or the exors or admors of such survivor, during the minority of any person who, under the limitations hereinbefore contained, if of full age, would be entitled, &c., *continue as in preceding form.*

Power to grant building and improving leases. Variation for reversionary leases.

XXXVII. AND ALSO (*f*) to demise all or any part of the sd hereditaments hereby settled to any person or persons who shall improve or covenant to improve the same within *three* years from the date of the lease by building thereon any new house or building, or by repairing or improving any then existing house or building, for

(*e*) Where the form of name and arms clause at p. 1152, is used, say "for every person for the time being beneficially entitled under these presents to the possession or receipt of the rents and profits of the hereditaments hereby settled for any legal or equitable estate of freehold, and also for the sd, *trustees*, or the [survivors or] survivor of them, or the exors or admors of such survivor during the minority of any person who, if of full age, would be entitled as aforesd, &c."

(*f*) If the form given above, p. 1174, note (*b*), is adopted, this will run, "AND SECONDLY, &c." If it should be found necessary to make a new commencement, say, "AND IT IS HEREBY FURTHER AGREED and declared that it shall be lawful for the person or persons hereinbefore authorised to grant leases of the hereditaments hereby settled to demise, &c."

any term of years not exceeding ninety-nine years, to take effect in possession, or within six calendar months from the date of the lease (*g*), so as there be reserved on every such lease the best yearly rent or rents that can be reasonably obtained without taking anything in the nature of a fine or premium, but so that during the first three years of any such term a peppercorn rent, or rent smaller than that payable during the residue of such term may be reserved: And so as there be contained in every such lease a condition of re-entry for non-payment within a reasonable time to be therein specified of the rent or rents thereby reserved, and so as the lessee or lessees do execute a counterpart thereof, and do thereby covenant for the payment of the rent or rents thereby reserved [a receipt for which counterpart, signed by the person or persons exercising this present power, or any of them, and endorsed on the lease, shall be conclusive evidence, as between all persons claiming under these presents, of the due execution of such counterpart.]

Power to grant mining leases. Variation for reversionary leases.

XXXVIII. AND ALSO (*a*) to demise all or any of the mines, quarries, stones, minerals, and substances in, under, or upon any of the lands hereby settled, either with or without the surface of such lands or any part thereof, and either with or without any messuages, buildings, lands, easements, or hereditaments convenient to be held with the same respectively, and whether the same shall or shall not have been previously opened or worked, for any term of years not exceeding sixty years, to take effect in possession, or within six calendar months from the date of the lease (*b*), with such liberties, licenses, and powers

(*g*) If reversionary leases are authorised, insert here, "or for any term of years, to commence on the expiration of any then existing lease of the hereditaments comprised in such reversionary lease, and to cease at any time not later than ninety-nine years from the date of the reversionary lease."

(*a*) See above, p. 1175, note (*f*).

(*b*) If reversionary leases are authorised insert here, "or for any term

for searching for, working, getting, washing, smelting, and making merchantable the sd mines, quarries, stones, minerals, and substances as to the person or persons exercising this present power shall seem proper, and to insert in any such lease powers of instroke and outstroke, and an average clause enabling short workings in any one year to be made up in the following year or years without paying any royalty for the same, and power to refer disputes arising thereunder to arbitration, and any other clauses or provisions which may appear to the person or persons exercising this power to be necessary or proper, but so that there be reserved on every such lease the best rent or rents, renders, royalties, and reservations by the ton, acre, or otherwise, and if thought proper variable in amount according to the minerals or substances actually got or made merchantable, or the acreage worked, without taking anything in the nature of a fine or premium, and so as there be contained in every such lease a condition of re-entry for non-payment or non-delivery, within reasonable times to be therein specified, of the rent or rents, renders, royalties, and reservations thereby reserved, and so as the lessee or lessees do execute a counterpart thereof, and do thereby covenant for the due payment or delivery of the rents, renders, royalties, and reservations thereby reserved [a receipt for which counterpart, signed by the person or persons exercising this present power, or any of them, and endorsed on the lease, shall be conclusive evidence as between all persons claiming under these presents of the due execution of such counterpart.]

Power to grant leases of easements.

XXXIX. AND ALSO (*c*) to grant way-leaves, water-leaves, and other easements, rights, or privileges of any nature of years to commence on the expiration of any then existing lease of the hereditaments comprised in such reversionary lease, and to cease at any time not later than sixty years from the date of such reversionary lease."

(*c*) See p. 1175, note (*f*).

over the hereditaments hereby settled, or any part thereof, for any term of years not exceeding ninety-nine years, to take effect in possession, or within six calendar months from the date of the grant, (*d*) upon such conditions as may be thought proper, but so that nothing in the nature of a fine or premium be taken for the same.

Power to accept surrenders of leases, and to take value of surrendered lease into account on granting a renewal.

XL. AND ALSO (*e*) to make allowances to, and arrangements with tenants, and to accept a surrender of any lease or tenancy for the time being affecting the whole or any part of the hereditaments hereby settled, and so that if any lease shall be granted under any of the powers hereinbefore contained on the surrender of a then existing or prior lease or tenancy, the value of the interest surrendered or the tenant-right or claim to compensation for improvements or otherwise in respect of such lease or tenancy, may be taken into account in fixing the rent and other terms of the new lease.

Power to lay out property for building.

XLI. AND ALSO (*e*), to appropriate and lay out, or to authorise the lessee or lessees in any lease granted under any of the powers hereinbefore contained to appropriate and lay out, any part or parts of the hereditaments hereby settled [*if desired, say,* other than and except, &c.,] as sites for, and to erect, build, and make thereon, or to authorize any such lessee or lessees as aforesd to erect, build, and make thereon, any churches, chapels, schools, or other buildings, parks, squares, gardens, or other open spaces, roads, paths, sewers, drains, water-courses, water-works, water-pipes, gas-works, gas-pipes, or any other works which may tend to the adaptation, improvement, or development of the hereditaments hereby

(*d*) If reversionary leases are authorised insert here, "or for any term of years to commence on the expiration of any then existing lease of the hereditaments over which any such easement or right is granted by such reversionary lease, and to cease at any time not later than ninety-nine years from the date of such reversionary lease."

(*e*) See p. 1175, note (*f*).

settled, or any part or parts thereof, as a building estate, and either to dedicate the same to the public or to convey or demise the same in fee simple or for any term of years to any corporation or public body or authority for any purposes for which they are or may be authorised to accept the same, or to any persons as trustees upon any trusts to be declared concerning the same for the public or for the residents on or lessees of the hereditaments hereby settled, or any part or parts thereof, or the residents on or owners of any adjoining property, or to demise the same to any such lessee or lessees as aforesd, and so that any such conveyance or demise may be made either gratuitously or for such consideration in money, either in gross to be received and applied by the sd trustees or trustee as if the same had arisen from a sale under the power hereinafter contained, or by way of rent to be received by the person or persons for the time being entitled to the rents and profits of the sd premises, or in land, easements, rights, or hereditaments to be conveyed or assured to the uses or upon the trusts of these presents as if the same had been purchased with the proceeds of a sale under the power hereinafter contained, or otherwise to be annexed in enjoyment to the hereditaments for the time being settled to the uses of these presents, or some part or parts thereof, or partly for one and partly for any other of such considerations, and with such reservations and restrictions and generally upon such terms as the person or persons exercising this power shall think fit.

Power to accept leases of easements.

XLII. AND ALSO (*f*) to accept leases of easements, rights, or privileges of any nature to be annexed in enjoyment to the hereditaments hereby settled, or any part thereof, upon such terms and conditions as the person or persons exercising this present power shall think fit, and such easements, rights, and privileges shall, so far as the tenure or nature thereof will admit, be subject to the same uses, trusts, powers, and provisions as the hereditaments in

(*f*) See p. 1175, note (*f*).

respect of which the same shall be accepted, except that the same shall be subject to the like provisions as to the absolute vesting and devolution thereof as the hereditaments held by leases for years hereby settled [to be purchased with moneys arising from sales under the power of sale hereinafter contained,] And the rents reserved by any such lease shall be paid, and the person or persons in whose name or names such lease shall be taken shall be indemnified in respect of such rents and the covenants therein contained, out of the rents and profits of the hereditaments hereby settled.

Power to make agreements for leases, &c.

XLIII. AND ALSO (*d*) to enter into, alter, vary, and rescind agreements for the exercise of the several powers hereinbefore contained for granting leases of the hereditaments hereby settled, [or of easements and other rights over the same,] and to agree for the apportionment of an entire rent between different parts of the property to be leased, and so that, on such apportionment being made, the requirement that the best yearly rent or rents be reserved as aforesd shall apply to the aggregate of the rents reserved by the leases to be granted pursuant to any such agreement, and not to the rent reserved by any one lease, but so that no lease to be granted in pursuance of any such agreement shall be granted for a longer term than could have been granted if such lease had been granted at the date of such agreement.

Power to grant licenses to copyholders.

XLIV. AND ALSO (*d*) to grant to any copyholder or customary tenant of any manor for the time being subject to the subsisting uses of these presents, license in writing to build upon or otherwise improve his tenement, or any part of the waste of the sd manor, and to make roads or streets in, through, or upon the same, and to annex the same or any part thereof to adjacent ground for the purpose of improvement, and to pull down any of the messuages or buildings which now are or hereafter shall be on such

(*d*) See p. 1175, note (*f*).

tenement, and to demise all or any part of such tenement or of such waste for any term of years not exceeding twenty-one years, or for building, improving, or repairing purposes, not exceeding ninety-nine years, to commence from or within six calendar months from the granting of such license, or for any one or more of the purposes aforesd: And also to fix the sum which, during the term mentioned in such license, shall be considered as the annual value, for the purpose of assessing the fines payable to the lord on admission to any land which shall be comprised in such license, so that such annual sum shall not be less than the best rent which at the date of such license might reasonably be obtained on a demise of the premises therein comprised for the term mentioned in such license, and so that no fine or premium shall be taken for the making or granting such license except the customary annual fine, if any, for every year of the term to be expressed in such license, and such fees as are usual, and that upon the grant of every such license there shall be reserved to the lord all fines, heriots, rents, customs, and services due and to grow due in respect of the tenement to which such license shall relate, and that every such license shall be entered on the court rolls of the manor.

Proviso to be added to powers of leasing, &c., where there is a limitation to tenants in common.

XLV. PROVIDED ALWAYS, AND IT IS HEREBY AGREED and declared, that the sd several powers of leasing, making allowances to and arrangements with tenants, accepting surrenders of leases or tenancies, [appropriating and laying out or authorising other persons to appropriate and lay out sites, accepting leases of easements, making agreements for leases, and granting licenses to copyholders, and the powers ancillary thereto respectively,] hereinbefore contained shall not be exercised during the minority of any person or persons who would, if of full age, be entitled to the possession or receipt of the rents and profits of any undivided share or shares of the hereditaments hereby settled without the concurrence of the person or persons of full age (if any) who shall be seised of or entitled to the other undivided

share or shares thereof or otherwise have power in that behalf.

Commencement of powers of sale and exchange, enfranchisement, partition, &c., in an ordinary strict settlement on marriage. (*f*)

XLVI. AND IT IS HEREBY AGREED and declared that it shall be lawful for the sd, *trustees*, or the [survivors or] survivor of them, or the exors or admors of such survivor during the life of the sd, *husband*, with his consent in writing, and after his decease, and during the minority of any son [or daughter] of the sd intended marriage, who, if of full age, would for the time being be entitled to the possession or receipt of the rents and profits of the hereditaments hereby settled [or of any undivided share or shares thereof (*g*)] at the discretion of the sd trustees or trustee for the time being, to, &c. (*a*)

The same where there are various limitations for life and in tail.

XLVII. AND IT IS HEREBY AGREED and declared, that it shall be lawful for the sd, *trustees*, or the [survivors or] survivor of them, or the exors or admors of such survivor during the life of any person (*b*) who under the limitations hereinbefore contained, shall for the time being be beneficially entitled to the possession or receipt of the rents and profits of the sd hereditaments hereby settled as tenant for life with his [or her] consent in writing, and

(*f*) This form is also adapted to a settlement containing a limitation to tenants in common in fee simple.

(*g*) The words in brackets to be inserted where there is a limitation to tenants in common. See the provisions in forms LIX. and LX. as to this case.

(*a*) If there are several powers given to the trustees, it may be convenient to continue as follows, "to exercise the powers following (that is to say), FIRST, a power to, &c.; SECONDLY, a power, &c."

(*b*) Where the form of Name and Arms Clause above, p. 1152, is used, say, "any person of full age for the time being beneficially entitled under these presents to the possession or receipt of the rents and profits of the hereditaments hereby settled for any legal or equitable estate of freehold by purchase, with his or her consent in writing, and during the minority of any person who if of full age would be entitled as aforesd, at the discretion of the sd trustees or trustee for the time being, to, &c."

also during the minority of any person who, under the limitations hereinbefore contained, would, if of full age, be for the time being beneficially entitled to the possession or receipt of the rents and profits of the same premises [or of any undivided share or shares thereof] as [tenant for life or] tenant in tail male [or in tail] by purchase at the discretion of the sd trustees or trustee for the time being, to, &c. (*c*)

Power to sell or exchange. (*d*)

XLVIII. To SELL or exchange for other manors, messuages, lands, tenements, or hereditaments in England or Wales, all or any part of the hereditaments hereby settled, and upon any such exchange to give or receive money either in gross, or by way of rent for equality of exchange.

Power to partition. (*f*)

XLIX. AND ALSO (*e*) to concur with the person or persons for the time being seised of, or entitled to, or having power in that behalf over or in relation to the other undivided share or shares of or in the hereditaments of which an undivided share or shares is or are hereby settled, in making a partition of the same hereditaments, or any part thereof, [and that notwithstanding that any of the sd trustees, or a sole trustee, may be entitled to, or interested in, any share or shares of or in the same,(*g*)] and to give or receive money either in gross or by way of rent for equality of partition.

Power to sell, &c., surface and minerals separately.

L. AND ALSO to make any such sale, or exchange, [or partition] as aforesd, of the surface only of any such hereditaments apart from and without the mines and minerals, or

(*c*) See last page, note (*a*).

(*d*) For the remaining clauses of the full power of sale and exchange, see forms LIV., LVI., LVIII., LXI., LXII. For a short power relying on the statute, see form LXIII.

(*e*) If it should be necessary to make a new commencement in any of the powers given to the trustees, say, "AND IT IS HEREBY FURTHER AGREED and declared, that it shall be lawful for the sd, *trustees*, or the [survivors or] survivor of them, or the exors or admors of such survivor, with such consent or at such discretion as aforesd, &c."

(*f*) For the remaining clauses of the power to partition, see forms LIV., LVI., LVIII., LXI., LXII.

(*g*) See p. 1075, note (*f*).

any of the mines and minerals in, under, or upon the same, or of the sd mines and minerals apart from and without the surface of such hereditaments, and with or without a reservation or grant of any rights of searching for, getting, working, and carrying away the same mines and minerals, or any other rights or easements incidental thereto.

Power of enfranchisement in settlement of a manor. (*a*)

LI. AND ALSO to enfranchise (*b*) any copyhold or customary tenement holden of any manor hereby settled, with or without all or any of the rights of common, and other rights, liberties, or privileges appendant or appurtenant to or held or enjoyed with such tenement, and with or without a reservation of all or any of the mines and minerals thereunder, or any other reservations, for such consideration in money either in gross or by way of rent or for such consideration in land, or partly for one and partly for another or others of such considerations and in such manner as the sd trustees or trustee shall think fit.

Power to grant easements. (*c*)

LII. AND ALSO to grant or create any easements or other rights or privileges of any nature over or in relation to the hereditaments hereby settled or any part thereof for such consideration in money either in gross or by way of rent or for such consideration in land, or the grant or creation of an easement or other right or privilege over or in relation to land, to be annexed in enjoyment to the hereditaments hereby settled or any part thereof, or partly for one and partly for another or others of such considerations, and generally upon such terms and in such manner as the sd trustees or trustee shall think fit.

(*a*) For the remaining clauses of the power of enfranchisement, see forms LIV., LVI., LVIII., LXI., LXII.

(*b*) Where an undivided share of a manor is settled, say, "or concur in enfranchising," and, "any manor an undivided share or shares of which is or are hereby settled."

(*c*) For the remainder of this power, see forms LIV., LVI., LVIII., LXI., LXII. See also the corresponding provision in connection with the leasing powers, p. 1177.

LIII. AND ALSO to purchase or accept any easement or other right or privilege of any nature over land, to be annexed in enjoyment to the hereditaments hereby settled or any part thereof, for such consideration in money either in gross or by way of rent, or for such consideration in land or the grant of an easement or other right or privilege over the hereditaments hereby settled, or any part thereof, or partly for one and partly for another or others of such considerations and generally upon such terms and in such manner as the sd trustees or trustee shall think fit. Power to purchase easements. (*d*)

LIV. AND TO make any such sale as aforesd, either by public auction or private contract, and to make or agree to any stipulations or provisions as to title, or evidence or commencement of title or otherwise, in any conditions of sale or contract for sale or exchange, [partition or enfranchisement, or for the grant or acquisition of any easement or other right or privilege,] and to buy in at any sale by auction, and rescind or vary any contract and to enter into any new contract for any of the purposes last aforesd, without being responsible for loss. Power to sell, &c., subject to conditions.

LV. AND ALSO from time to time to renew any lease or grant for the time being subject to the uses or trusts of these presents, and to pay the fines and expenses of such renewal, but without altering the equities or obligations of the several persons interested as to the mode in which the same ought ultimately to be paid or borne, and any such renewed lease or grant shall be subject to the same uses, trusts, powers, and provisions as the original lease or grant. Power to renew leases. (*e*)

LVI. AND ALSO to raise on mortgage of the hereditaments hereby settled, or any part or parts thereof, all or any moneys which [may be raiseable under the trusts of any term hereinbefore limited, or which may be charged or become raiseable by virtue of any of the powers hereinbefore Power to raise money on mortgage. (*f*)

(*d*) For the remainder of this power, see forms LIV., LVI., LVIII.
(*e*) For the remainder of this power see forms LVI., LVIII., LXII.
(*f*) For remainder of this power, see form LVIII.

contained, or which] may be agreed to be paid by the sd trustees or trustee for equality of exchange [or partition, or for obtaining the enfranchisement of any hereditaments of copyhold or customary tenure for the time being subject to the uses or trusts of these presents, or for the purchase or acquisition of any easement or other right or privilege hereby authorised to be purchased or acquired, or which may be required for the purpose of effecting any of the permanent improvements hereby authorised, or for the renewal of any lease or grant for the time being subject to the trusts of these presents, or for discharging or consolidating any charges or incumbrances affecting any hereditaments of whatsoever tenure for the time being subject to the uses or trusts of these presents,] and so that no mortgagee advancing money on a mortgage purporting to be made under this present power shall be concerned to see that such money is wanted or that no more than is wanted is raised, and to secure the repayment of any moneys so raised as aforesd with interest, at such rate as may be thought proper, by a mortgage for any term of years or in fee simple of the hereditaments to be charged therewith, and either with or without a power of sale, and with such other powers and provisions and upon such terms in all respects as may be deemed expedient.

Power in settlement of an undivided share to concur with co-owners in selling, &c.

LVII. AND ALSO to concur with the person or persons for the time being seised of or entitled to or having power in that behalf over or in relation to the other undivided part or share, parts or shares, of any hereditaments of which an undivided share or shares is or are hereby settled, in exercising all or any of the powers hereinbefore contained of sale and exchange, [enfranchisement and granting or purchasing or accepting grants of easements or other rights,] and so that any purchase or consideration monies arising therefrom [or paid in respect thereof], and any expenses or outgoings may be apportioned after the same shall have been received, paid, or incurred, [and that notwithstanding that any of the sd trustees, or a sole trustee, may be entitled to

or interested in any of the other parts or shares of the same premises. (*g*)]

Power to execute assurances, &c.

LVIII. AND ALSO for any of the purposes aforesd, by any deed or deeds, to revoke all or any of the uses, trusts, powers, and provisions, hereinbefore limited, declared, and contained, or to be limited or created under any of the powers hereinbefore contained of charging jointures [rentcharges] and portions, of and concerning the hereditaments and premises comprised in, or affected by, any such sale, exchange, [enfranchisement, partition, mortgage], or other dealing as aforesd, but subject to every mortgage made under the trusts of any term of years hereinbefore limited, or to be limited under any of the powers hereinbefore contained, and to any mortgages or leases [easements or rights] made or granted under the respective powers hereinbefore contained, and by the same, or any other deed or deeds, to limit or appoint any uses, trusts, or estates, of the sd premises, or any part thereof, which may be thought expedient, and generally for any such purpose as aforesd, to execute and do all such assurances and things as the sd trustees or trustee shall think fit.

Provision as to exercise of powers of sale, &c., where there is a limitation to tenants in common in tail or in fee. (*a*)

LIX. PROVIDED ALWAYS, AND IT IS HEREBY AGREED and declared, that the powers of sale and exchange [and enfranchisement, and granting and purchasing and accepting grants of easements and other rights,] hereinbefore contained shall not be exercised during the minority of any person who, under the limitations hereinbefore contained, would for the time being, if of full age, be beneficially entitled to the possession or receipt of the rents and profits of any undivided share of the hereditaments hereby settled, without the

(*g*) See above, p. 1075, note (*f*).

(*a*) This clause requires the concurrence of the adult tenants in tail or in fee on a sale of the entirety; compare the similar provision as to leases above, p. 1181. The power might be validly made exerciseable over the entirety without such concurrence, see 3 Davidson, Prec. 576, 3rd ed. If it should be desired so to provide, this clause may readily be adapted for the purpose. The next clause authorises the sale of the undivided share only of an infant tenant in tail.

concurrence of the person or persons of full age (if any), who under such limitations shall for the time being be beneficially entitled to the other undivided share or shares thereof, or any of such shares, or who shall otherwise have power in that behalf.

Power to sell undivided shares of minors, (*b*)

LX. PROVIDED ALWAYS, AND IT IS HEREBY AGREED and declared, that the power of sale hereinbefore contained shall be exerciseable by the sd trustees or trustee during the minority of any person who, if of full age, would be entitled to the possession or receipt of the rents and profits of any undivided share of the hereditaments hereby settled as tenant in tail [male, or in tail] by purchase, over or in relation to such undivided share, and that the net proceeds of such sale shall be invested by the sd trustees or trustee in any stocks, funds, or securities, authorised as investments of the proceeds of a sale under the power hereinbefore contained, and the income of such net proceeds of sale of such undivided share, and of the investments thereof, shall during such minority as aforesd be applied as if the same had arisen from the undivided share which shall have been sold as aforesd: And upon the termination of such minority, the sd proceeds of sale, and the investments and any accumulations thereof, shall be held and disposed of in like manner as if the same had been accumulations made during such minority of the rents and profits of the undivided share which shall have been sold.

Declaration as to application of rents reserved on exchanges, &c.

LXI. AND IT IS HEREBY AGREED and declared that all annual rents which shall be reserved upon any such exchange [partition, enfranchisement, grant of any easement or other right, or appropriation (*c*)] as aforesd, shall be so reserved and settled that the same shall be received and enjoyed by the person or persons who, under the limitations hereinbefore contained would, for the time being, be entitled

(*b*) A power of this description might occasionally be found useful.
(*c*) See p. 1178, form XLI.

to the possession or receipt of the rents and profits of the hereditaments hereby settled.

LXII. AND IT IS HEREBY AGREED and declared that the sd trustees or trustee for the time being shall receive all moneys which shall arise from any such sale [enfranchisement, grant of any easement or other right, or appropriation (*d*)], or be receivable for equality on any such exchange [or partition] as aforesd, and shall, during the lifetime of the sd, *husband*, with his consent in writing, and afterwards at the discretion of the sd trustees or trustee (*e*), apply the principal moneys so received after payment of costs and expenses in manner following, that is to say, in or towards the payment or discharge of any money which may be payable by the sd trustees or trustee for equality on any such exchange [or partition] as aforesd, [or for the purchase of any easement or other right or privilege hereinbefore authorised to be acquired,] or for the fines or expenses on the renewal of any lease or grant for the time being subject to the uses or trusts of these presents, but without altering the equities or obligations of the persons interested as to the mode in which such fines or expenses ought ultimately to be paid or borne, or in or towards the payment or discharge of any mortgage or incumbrance for the time being affecting all or any of the hereditaments of whatever tenure for the time being subject to the uses or trusts of these presents, or in the purchase of any freehold or copyhold [or leasehold] manors, messuages, lands, tenements, or heredita- Trusts of sale moneys, &c.

(*d*) See p. 1178, form XLI.

(*e*) If there are several life estates, say, "during the lifetime of any person of full age for the time being beneficially entitled under the limitations hereinbefore contained to the possession or receipt of the rents and profits of the premises hereby settled as tenant for life, with his [or her] consent in writing, and at any other time at the discretion of the sd trustees or trustee." Where the form of name and arms' clause at p. 1152, is used, for, "as tenant for life," substitute, "for any legal or equitable estate of freehold by purchase."

ments to be situate in England or Wales [such copyhold or leasehold hereditaments being contiguous to, or convenient to be held with the hereditaments for the time being subject to the uses or trusts of these presents, or some part or parts thereof, and such leasehold hereditaments having not less than 60 years unexpired at the date of the purchase] (*f*): And shall cause the hereditaments to be purchased or taken in exchange [or on partition or enfranchisement] as aforesd to be assured and settled in manner following, but not so as to increase or multiply charges, or powers of charging, (that is to say), as to such of the sd hereditaments as shall be of freehold tenure, to, upon, with, and subject to such of the uses, trusts, powers, and provisions hereinbefore declared and contained concerning the [freehold] hereditaments hereby settled as shall be then subsisting or capable of taking effect, and as to such of the sd hereditaments as shall be of copyhold, customary, or leasehold tenure, upon, with, and subject to such trusts, powers, and provisions, as shall, having regard to the tenure of the property, most nearly correspond with such of the uses, trusts, powers, and provisions hereinbefore declared and contained concerning the [freehold] hereditaments hereby settled as shall be then subsisting or capable of taking effect, but so that none of the sd hereditaments which shall be of leasehold tenure shall vest absolutely in any person hereby made tenant in tail [male, or in tail] by purchase, unless he [or she] shall

(*f*) If appropriate add here, "or if the sd trustees or trustee in their or his discretion shall deem the same to be for the permanent benefit and improvement of the hereditaments for the time being subject to the uses or trusts of these presents, or any part thereof, in or towards the payment of the expenses of the appropriation and laying out of the sd hereditaments, or of the erection, building, or making of any buildings or works under the powers hereinbefore contained, or in or towards the payment of the expenses of any such permanent improvements as are hereby authorised." See p. 1178, form XLI., and p. 1193, form LXIV.

attain the age of twenty-one years, but on his [or her] death under that age shall go and devolve as if the same had been freeholds of inheritance hereby settled, and so that proper provisions shall be inserted in such settlement for the renewal of any renewable lease or grant, and for raising the fines and expenses of such renewals out of the hereditaments held on such renewable lease or grant, or otherwise, but so that the several persons interested may contribute to such fines and expenses in the proportions and mode in which they would be bound to contribute according to the rules of equity: AND IT IS HEREBY FURTHER AGREED and declared, that in the meantime, and until the sd principal moneys shall be applied for any of the purposes hereinbefore mentioned, the sd trustees or trustee shall, during the lifetime of the sd, *husband*, with his consent in writing, and afterwards at the discretion of the sd trustees or trustee (*g*), invest the same in the names or name of the sd trustees or trustee, in or upon [any of the public stocks or funds or government securities of the United Kingdom, or upon real securities in England or Wales, but not in any other mode of investment] [*or*, any stocks, funds, or securities in or upon which trust funds or cash under the control of the Chancery Division may for the time being be authorised by law to be invested,] and may with the like consent or at the like discretion vary or transpose such investments into or for any others hereby authorised: And shall pay and apply the annual income arising from such stocks, funds, and securities, to such person or persons for such purposes and in such manner as the rents and profits of the

(*g*) If there are several life estates, "during the lifetime of any such tenant for life as aforesd, with his [or her] consent in writing, and at any other time at the discretion of the sd trustees or trustee." When the form of name and arms' clause at p. 1152, is used, for "such tenant for life as aforesd," substitute, "person of full age beneficially entitled to the sd premises for any legal or equitable estate of freehold by purchase.'

hereditaments to be purchased as aforesd would be payable or applicable if such purchase and settlement as aforesd were actually made.

Short power of sale and exchange, adopting the provisions of the Acts 23 & 24 Vic., c. 145, and 25 & 26 Vic., c. 108.

LXIII. PROVIDED ALWAYS, and it is hereby agreed and declared, that the sd, *trustees*, and the [survivors and] survivor of them, and the exors or admors of such survivor, shall have a power of sale and exchange over all or any of the hereditaments hereby settled [exerciseable during the life of the sd, *husband*, with his consent in writing, and after his death, and during the minority of any son [or daughter] of the sd intended marriage who if of full age would be entitled to the possession or receipt of the rents and profits of the same premises [or of any undivided share thereof (*h*)] at the discretion of the sd trustees or trustee for the time being] (*i*), and any disposition by way of sale or exchange, which by virtue of the Act of the 25th & 26th years of the reign of Her present Majesty, cap. 108, might be made of the lands or minerals separately or otherwise with the sanction of the Chancery Division, may be made by the persons or person exercising this present power of their or his own authority, and without such sanction.

(*h*) The words in this bracket to be inserted if there is a limitation to tenants in common.

(*i*) If there are several life estates and limitations to collaterals, substitute for the words bracketed, "exerciseable during the life of any person of full age who, under the limitations hereinbefore contained, shall for the time being be beneficially entitled to the possession or receipt of the rents and profits of the hereditaments hereby settled as tenant for life, with his [or her] consent in writing, and during the minority of any person who under such limitations would, if of full age, be for the time being beneficially entitled to the possession or receipt of the rents and profits of the same premises [or of any undivided share or shares thereof] as [tenant for life or] tenant in tail [male or in tail] by purchase, at the discretion of the sd trustees or trustee for the time being." For the variation where the form of name and arms' clause at p. 1152, is used, see above, p. 1182, note (*b*).

Power to trustees to lay out money in improvements.

LXIV. PROVIDED ALWAYS, and it is hereby agreed and declared, that it shall be lawful for the sd, *trustees, &c., for commencement of power see forms* XLVI. *and* XLVII., to apply any moneys arising from a sale under the power hereinbefore contained [or otherwise received by them or him under the trusts of these presents] in or towards the payment or discharge of the expenses of draining or erecting farm-buildings or cottages on the sd hereditaments, or executing thereon any other works of improvement as defined by the Improvement of Land Act, 1864, or any Act extending or amending the same (*a*), or the expenses of any substantial repairs or improvements of the sd mansion-house, or the outbuildings thereof, or any other buildings on the sd hereditaments, [or the appropriation or laying out of any part or parts of the sd hereditaments as sites for and the erection, building, making, and laying out thereon of any churches, chapels, schools, or other buildings, parks, squares, gardens, or other open spaces, roads, paths, sewers, drains, watercourses, reservoirs, waterworks, water-pipes, gas-works, gas-pipes, or any other works which may tend to the improvement or development of the sd hereditaments, or any part or parts thereof, as a building estate, or the expenses of the dedication of the same to the public under the powers hereinbefore contained,] or the expenses of any other works which, in the opinion of the sd trustees or trustee, may be for the permanent improvement or benefit of the sd hereditaments.

Covenant to surrender copyholds upon trusts corresponding with uses of freeholds.

LXV. AND THIS INDRE ALSO WITNESSETH that in further pursuance of the sd agreement, and in consideration of the sd intended marriage, the sd, *husband*, with the approbation of the sd, *wife*, doth hereby for himself, his heirs, exors, and admors, covenant with the sd, *trustees*, their heirs and assigns, that if the sd intended marriage shall take place, he the sd, *husband*, and all other necessary

(*a*) See the Acts 27 & 28 Vic., c. 114 ; 33 & 34 Vic., c. 56 ; 34 & 35 Vic., c. 84 ; 38 & 39 Vic., c. 55, s. 31 ; 40 & 41 Vic., c. 31.

parties (if any) will forthwith surrender into the hands of the lord or lords, lady or ladies, of the several manors of which the same are respectively holden, *parcels*, p. 251, [AND ALL other (if any) the hereditaments of copyhold or customary tenure, situate in the respective parishes of, &c., in the county of, &c., to which the sd, *husband*, is now entitled for an estate of inheritance at law or in equity,] *General words*, p. 264; *Estate clause*, p. 264: TO THE USE of the sd, *trustees*, their heirs and assigns for ever, to be holden of the lord or lords, lady or ladies of the sd respective manors, according to the customs thereof respectively, by and under the rents, fines, heriots, suits, and services due and of right accustomed for the same: UPON SUCH TRUSTS and with and subject to such powers and provisions as shall correspond with the uses, trusts, powers, and provisions hereinbefore declared and contained concerning the freehold hereditaments hereby settled, or as near thereto as the different tenure of the property will permit, but not so as to increase or multiply charges or powers of charging: AND FURTHER, that after the sd intended marriage, and in the meantime and until the same respective copyhold hereditaments and premises shall have been surrendered pursuant to the covenant hereinbefore contained, the sd, *husband*, and his heirs will stand possessed thereof upon trust for the surrender thereof pursuant to such covenant, and subject thereto upon the trusts and with and subject to the powers and provisions upon with and subject to which the same would be held if such surrender had been made.

Assignment of leaseholds for years upon trusts corresponding with uses of freeholds.

LXVI. AND THIS INDRE ALSO WITNESSETH that in further pursuance of the sd agreement and in consideration of the sd intended marriage, the sd, *husband*, with the approbation of the sd, *wife*, doth hereby assign (*a*) unto the sd, *trustees*, their exors, admors, and assigns, ALL AND

(*a*) If the leaseholds are held for lives, say, "grant." The limitation to the trustees, their "exors, admors, and assigns," will be correct in either case.

SINGULAR, *parcels by reference to leases,* [*or where there are several leases omit the recitals of the leases and say:* ALL AND SINGULAR the messuages or tenements, pieces or parcels of land and hereditaments comprised in or expressed to be demised by the several indres of lease specified in the schedule hereto] [AND ALL other (if any) the hereditaments held under any lease or leases for years [or a life or lives] situate in the respective parishes of, &c., in the county of, &c., to which the sd, *husband,* is now entitled at law or in equity,] WITH the rights, easements, and appurtenances thereto respectively belonging, *Estate clause,* p. 264; *Habendum to trustees,* p. 267, *form* VIII., upon trust for the sd, *husband,* his exors and admors, until the sd intended marriage, and after such marriage, UPON TRUST that the sd, *trustees,* or the [survivors or] survivor of them, or the exors or admors of such survivor shall, by and out of the rents and profits of the sd respective leasehold premises, pay the rents and perform and observe the covenants by the several lessees, and conditions by and in the sd several leases reserved and contained, and subject thereto shall hold the same premises upon such trusts and with and subject to such powers and provisions as shall correspond with the uses, trusts, powers, and provisions hereinbefore declared and contained concerning the freehold hereditaments hereby settled or as near thereto as the nature of the premises will permit, but not so as to increase or multiply charges or powers of charging, and so that the sd leasehold premises (*b*) shall not vest absolutely in any person hereby made tenant in tail [male or in tail] by purchase, unless he [or she] shall attain the age of twenty-one years, but on his [or her] death under that age shall devolve in the same manner as if the same had formed part of the freeholds of inheritance hereby settled.

Trusts of chattels as heirlooms by reference to limitations of real estate.

LXVII. UPON TRUST to permit the sd —— and other articles and effects to devolve and be enjoyed as heirlooms with the

(*b*) If any of the leaseholds are held for lives, say, "such of the sd premises as are held under a lease or leases for years."

freehold hereditaments hereby settled, but so that the same shall not vest absolutely in any person hereby made tenant in tail [male or in tail] by purchase, unless he [or she] shall attain the age of twenty-one years, but on his [or her] death under that age such articles and effects shall devolve as if the same had formed part of the sd freehold hereditaments: AND IT IS HEREBY AGREED and declared that an inventory (*c*) of the sd heirlooms shall forthwith be made, and shall from time to time be revised at the cost of and shall be signed by the person for the time being entitled to the use and enjoyment thereof if of full age, and also by the sd trustees or trustee, and the sd heirlooms shall at all times be kept insured against fire to their full value so far as the same may be of an insurable nature, and properly preserved, at the expense of the person for the time being entitled to the use and enjoyment thereof: PROVIDED ALWAYS that the sd trustees or trustee shall not be bound to see to the insurance, custody, or preservation of the sd heirlooms, or to interfere in any way in relation thereto further than to require such inventory to be made and signed as aforesd, and shall not be responsible for any omission, neglect, or default, on the part of the person entitled to the use or enjoyment thereof or otherwise in relation to the insurance or preservation thereof, nevertheless the sd trustees or trustee shall be at liberty at any time, if they or he shall so think fit, to interfere for the protection of the sd heirlooms.

The same in personalty settlement. (*d*)

LXVIII. IN TRUST for the sd, *husband*, during his life, and after his decease for the sd, *wife*, in case she shall survive him during her life, and after the decease of the survivor of them, the sd, *husband*, and, *wife*, in trust for the eldest or only son of the sd intended marriage, his exors and admors, but in case such eldest or only son shall die under the age of twenty-one years and without issue, then in trust for the

(*c*) If a schedule of the heirlooms is inserted in the deed, the provision for an inventory may be omitted.

(*d*) This form properly belongs to the heading "PERSONAL SETTLEMENTS," but is inserted here as naturally connected with the preceding form.

second son (if any) of the sd intended marriage, his exors and admors, with a like gift over to the third and every younger son (if any) of the sd intended marriage on the death of his next elder brother under the age of twenty-one years and without issue: And in case there shall be no son of the sd intended marriage, or every son shall die under the age of twenty-one years and without issue, then in trust for the eldest or only daughter of the sd intended marriage, her exors and admors, but in case such eldest or only daughter shall die under the age of twenty-one years and without issue, then in trust for the second daughter (if any) of the sd intended marriage, her exors and admors, with a like gift over to the third and every younger daughter (if any) of the sd intended marriage on the death of her next elder sister under the age of twenty-one years and without issue: And in case there shall be no child of the sd intended marriage, or every such child shall die under the age of twenty-one years and without issue, then in trust for the exors and admors of the sd, *husband*, and upon trust to permit the sd —— and other articles and effects to be used and enjoyed as heirlooms by the person for the time being beneficially entitled thereto under the trusts hereinbefore declared: *Provisions as to inventory insurance and preservation of heirlooms, and protection of trustees, as in last form.*

Proviso that powers of former settlement shall override uses of re-settlement. Variations where additional property is settled.

LXIX. PROVIDED ALWAYS and it is hereby agreed and declared that nothing herein contained shall in anywise prejudice or affect the powers annexed to the life estate of the sd ——, or the powers exerciseable by the respective trustees or trustee with the consent of the sd —— contained in the sd indre of, &c., *the former settlement*, or any of such respective powers, [other than, *here specify any powers which are not to be exercised*,] and that the uses, estates, and powers limited or created by these presents or by any exercise of the powers herein contained shall from time to time [as regards such of the hereditaments hereby settled as immediately before the execution of these presents were subject to the subsisting uses or trusts of the sd indre of, &c.,

the former settlement, or, "were subject to the joint power of appointment by the sd A. and B. contained in the sd indre of, &c., *disentailing assurance,*"] be overreached by the exercise of any of the sd powers contained in the sd indre of, &c., *the former settlement,* in the same manner as if the uses, estates, and powers, limited or created by these presents had been limited or created by the sd indre of, &c., *the former settlement,* and that the hereditaments to be purchased with any moneys arising from any sale [or enfranchisement], or received for equality of exchange [or partition or the grant of any easement or other right] under the powers contained in the sd indre of, &c., *the former settlement,* shall, regard being had to the nature and tenure thereof, be settled and assured to the uses, upon the trusts, and with and subject to the powers and provisions which shall be subsisting by virtue of the sd indre of, &c., *the former settlement,* [the sd indre of, &c., *the disentailing assurance,*] and these presents, and that all annual rents which shall be reserved upon any exchange, [enfranchisement, partition, or grant of any easement or other right,] under the power [several powers] in that behalf contained in the sd indre of, &c., *the former settlement,* shall be so reserved and settled that the same shall be received and enjoyed by the person or persons who by virtue of the sd indre of, &c., *the former settlement,* [the sd indre of, &c., *the disentailing assurance,*] and these presents would for the time being be entitled to the possession or receipt of the rents and profits of the hereditaments comprised in the sd indre of, &c., *the former settlement,* and hereby settled.

Power to appoint new trustees in strict settlement of realty. Variations where there are several sets of trustees. (*e*)

LXX. PROVIDED ALWAYS, and it is hereby agreed and

(*e*) The trustees' receipt clause above, p. 1088, form LXVI., is adapted also to a strict settlement. The trustee clauses (namely, the receipt clause, power to appoint new trustees, and indemnity and reimbursement clauses) may be, and are usually, omitted in real as well as personal settlements in reliance on the enactments referred to above, p. 1088, note (*d*), and the clause supplemental to the statutory provisions, p. 1090, form LXIX., substituted, so far as it relates to the indemnity of the trustees.

declared, that if the sd trustees hereby constituted, or any of them, or any trustee or trustees appointed under this present power, or by a court having jurisdiction in that behalf, shall die or reside abroad, or refuse or become unfit or incapable to act in the sd trusts, then, and in every such case, it shall be lawful for the surviving or continuing trustees or trustee for the time being [of the class in which such vacancy or disqualification shall occur] (and for this purpose every refusing or retiring trustee shall, if willing to act in the execution of this power, be considered a continuing trustee) or for the acting exors or exor, admors or admor, of the last surviving and continuing trustee [of the same class] to appoint a new trustee, or new trustees, in the place of the trustee or trustees so dying or residing abroad, or desiring to be discharged, or refusing or becoming unfit or incapable to act as aforesd: And upon any such appointment the number of trustees may be augmented or reduced, [but not to less than two]: And upon every such appointment all the trust estate and property, if any (*f*), [*if there are several sets of trustees add*, "then vested in the trustees or trustee of the class in which such vacancy or disqualification shall have occurred, or in the heirs, exors, or admors, of the last survivor of such trustees"] shall, if and so far as the nature of the property and other circumstances may require, be transferred so that the same may be vested in the trustees [or trustee] (*g*) for the time being [of the same class]: And every trustee so appointed as aforesd may, as well before as after such transfer of the trust property, (if any,) act or assist in the execution of the trusts of these presents [*or if several sets of trustees*, "the trusts in respect of which he shall be so appointed a trustee"] as fully and

(*f*) The words, "if any," are proper in the case of a strict settlement where the trustees of the powers take no estate.

(*g*) If the words, "but not to less than two," which are bracketed above, are inserted, the words, "or trustee," here bracketed, will of course be omitted.

effectually in all respects as if he had been hereby appointed a trustee.

Provisions for indemnity and reimbursement of trustees.

LXXI. PROVIDED ALWAYS, and it is hereby agreed and declared, that the trustees for the time being of these presents shall be respectively chargeable only for such moneys, stocks, funds, and securities, as they shall respectively actually receive, notwithstanding their respectively signing any receipt for the sake of conformity, and shall be answerable and accountable only for their own respective acts, receipts, neglects, and defaults, and not for those of each other, nor for any banker, broker, auctioneer, or other person with whom or into whose hands any trust moneys or securities may be deposited or come, nor for dispensing wholly or partially with the investigation or production of the lessor's title on lending money on the security of [or purchasing (*h*)] leaseholds, nor for otherwise accepting less than a marketable title on the purchase, or taking in exchange, [or on partition or enfranchisement,] or on lending money on the security of any hereditaments, nor for any defect in title or value of any hereditaments purchased or taken in exchange, [or on partition or enfranchisement] or on mortgage, nor for the insufficiency or deficiency of any investment, nor for any other loss, unless the same shall happen through their own wilful default respectively: AND ALSO that the sd several trustees or trustee for the time being may reimburse themselves and himself respectively, or pay and discharge out of the trust premises all expenses incurred in or about the execution of the trusts or powers of these presents.

(*h*) See above, p. 1090, note (*f*).

PRECEDENTS

I.

PREC. I.

STRICT SETTLEMENT *on marriage of* FREEHOLDS, COPYHOLDS, *and* LEASEHOLDS, *belonging to* HUSBAND, *with usual clauses, the Limitations not extending beyond the* ISSUE *of the* MARRIAGE. VARIATIONS *where the* DAUGHTERS *take as* TENANTS *in* COMMON, *and for a* BUILDING *or* MINING ESTATE.

Parties, A., *husband*, 1; B., *wife*, 2; C. and D., *trustees of powers*, 3; [E. and F., *trustees of pin-money term*, 4; G. and H., *trustees of jointure term*, 5; K. and L., *trustees of portions term*, 6].(*a*) *Recite intended marriage*, p. 1039; *title of husband as in a conveyance on sale, or as above*, p. 1140, *form* I.: AND WHAS upon the treaty for the sd intended marriage, it was agreed that the sd hereditaments and premises [and all other, if any, the hereditaments of the sd A. of whatsoever tenure, situate, &c.,] should be assured and settled in manner hereinafter appearing: NOW THIS INDRE WITNESSETH that in pursuance of the sd agreement, and in consideration of the sd intended marriage, the sd A., with the approbation of the sd B., doth hereby grant unto the sd C. and D., and their heirs, *Freehold parcels by reference if convenient to a schedule*; [And all other (if any) the freehold messuages, lands, tithe rent-charges, and hereditaments of him, the sd A., situate or arising in the respective parishes of —— and ——, in the county of ——], *General words*, p. 264; *Estate clause*, p. 264: TO HAVE AND TO HOLD all the sd premises hereinbefore expressed to be hereby granted UNTO the sd C. and D., and their heirs, TO THE USE of the sd A. and his heirs until the sd intended marriage, and afterwards,

Recitals.

Agreement for settlement.

Witnesseth.

Grant.

Habendum.

(*a*) If there is only one set of trustees, the part in this bracket will of course be omitted.

PREC. I. Limitations.

limitation to E. and F., of a term of 99 *years* (*b*), "to commence from the sd intended marriage," p. 1146, *with remainder to the use of A. for life*, p. 1146; *Limitation of jointure rent-charge to B.*, p. 1149; *Powers of distress and entry to secure jointure*, p. 1149; [(*c*) *limitation to G. and H. of a term of* 200 *years, to commence from the death of A.*, p. 1146]; *Limitation to K. and L. of a term of* 1000 *years, to commence from the death of A.*, p. 1146; *Limitation to sons*, "of the sd A. by the sd B.," *successively in tail male*, p. 1150, *form* XII. [*Limitation to sons*, "of the sd A. by the sd B.," *successively in tail general*, p. 1150; *Limitation to daughters*, "of the sd A. by the sd B.," *as tenants in common in tail general with cross remainders*, p. 1150]; *remainder*, To THE USE of the sd A., his heirs and assigns for ever. [*Trusts of terms for raising pin-money*, p. 1154; *jointure* (*d*), p. 1155, *and portions*, p. 1156, *form* XX. (*e*).] *Power to husband to jointure a future wife*, p. 1163, *and to charge portions for children of future*

(*b*) If there is only one set of trustees, all the terms may be limited to them, there being no objection (having regard to the Judicature Act, 1873, 36 & 37 Vic., c. 66. s. 25, subsection 4,) to the limitation of the jointure and portions terms in immediate succession to the same trustees; or else all the limitations of the terms in the text may be omitted, and a limitation to C. and D. of a term of 1000 years, to commence from the marriage, inserted here.

(*c*) Where instead of limiting a term to secure the jointure power is given to the widow to limit a term, substitute for the part in this bracket, "AND TO THIS FURTHER USE, &c.," continue power to B. to limit a term in, "the sd premises," to commence, "from the decease of the sd A.," to secure the jointure, p. 1170, form XXXIII., "and subject and charged as aforesd," &c.

(*d*) The declaration of trusts of the jointure term will, of course, be omitted if there is no such term. See last note.

(*e*) If thought fit the provisions as to the costs of the trustees, and the application of the surplus rents and profits in the case of each term may be omitted, and the general provision, p. 1163, form XXIII., inserted here. Where there is only one set of trustees and one term, (see above. note (*b*)), substitute for this bracket, Trusts of term for raising pin-money, p. 1154, omitting the words in the final bracket, "AND UPON further trust that if and so often as the sd rent-charge of £—— hereinbefore limited to the sd B., or any part thereof, shall be unpaid for sixty days

PREC. I.

marriage, p. 1165; *Power to trustees to manage during minorities*, p. 1170, *or the short form in the note at* p. 1171, [*with the variations where there are limitations to daughters as tenants in common*]. *Power to lease for twenty-one years*, p. 1174, *form* XXXV. (*f*), [*to grant building and improving leases*, p. 1175] (*g*), *to accept surrenders of leases, &c.*, p. 1178 (*h*); *Power to make agreements for leases, &c.*, p. 1180 (*a*), [*if there is a limitation to tenants in common, add the proviso as to the powers of leasing, &c.*, p. 1181]. *Commencement of powers of sale, &c.* p. 1182, *form* XLVI. (*b*);

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after any of the times hereinbefore appointed for the payment thereof, then the sd trustees or trustee shall, by all or any of the means aforesd, raise, &c.," continue trusts of term to secure jointure, p. 1155, omitting the words in the final bracket, "AND UPON further trust that if there shall be any younger child, &c.," continue trusts of term for raising portions, p. 1156, retaining the final bracket.

(*f*) For the details of the leasing powers may be substituted a power, "to grant any such lease of all or any part of the hereditaments hereby settled, or any rights over the same, as the Chancery Division, by virtue of the Settled Estates Act, 1877, and of all or any Acts or Act for the time being in force, amending, extending, or re-enacting the same, is or shall be enabled to authorise, subject to such provisions and restrictions as to the nature and terms of the lease, as would be required by the sd Act or Acts if the lease were granted under the authority of the Court, except that upon any lease of earth, coal, stone, or mineral, it shall not be incumbent to provide for the setting aside or investment, or to deprive the immediate reversioner of the benefit of any part of the rent or payment reserved."

(*g*) For a mining property, insert here, Power to grant mining leases, p. 1176, and leases of easements, p. 1177.

(*h*) For a building estate, insert here, Power to lay out property for building, p. 1178. For a mining or building estate insert, Power to accept leases of easements, p. 1179.

(*a*) If a manor is settled, insert here, Power to grant licenses to copyholders, p. 1180.

(*b*) For this and the following clauses in the text down to and including the trusts of sale moneys, the short power of sale and exchange, p. 1192, may be substituted.

PREC. I.

Power to sell or exchange, p. 1183 (*c*); *Power to sell, &c., subject to conditions*, p. 1185. [*If desired, power to raise money on mortgage*, p. 1185] (*d*). *Power to execute assurances, &c.*, p. 1187; [*if there is a limitation to tenants in common, add provision as to exercise of powers of sale, &c.*, p. 1187 (*e*).] *Declaration as to rents reserved on exchanges, &c.*, p. 1188; *Trusts of sale moneys, &c.*, p. 1189 (*f*). *Covenant by A. to surrender copyholds*, p. 1193, *and assignment by him of leaseholds on trusts corresponding with uses of freeholds*, p. 1194: AND IT IS HEREBY AGREED AND DECLARED that in addition, &c., *continue Short trustee clause*, p. 1090, *form* LXIX., *so far as relates to indemnity of trustees*, [*or if thought expedient, in lieu of that clause insert, Trustees' receipt clause*, p. 1088, *Power to appoint new trustees with the variations if there are several sets of trustees*,

(*c*) In a settlement of an undivided share, insert here. Power to partition, p. 1183. For a mining estate, insert, Power to sell, &c., surface and minerals separately, p. 1183. For a manor, insert, Power of enfranchisement, p. 1184. For a building or mining estate, insert, Power to grant easements, p. 1184; and, Power to purchase easements, p. 1185. The following addition may be made to the power of sale for a building estate :—"WITH POWER either at the time of or previously to any such sale to enter into any covenants or arrangements or to cause any purchaser to enter into any covenants or arrangements restrictive of erecting buildings or regulating the position or value of buildings to be erected on the hereditaments hereby settled, or any part thereof, or otherwise restrictive of the user of any such hereditaments whether sold or intended to be sold or not, or in respect of making, repairing, or maintaining roads, sewers, or fences, or other like matters, or any other arrangements which may be deemed expedient for adapting or developing the sd hereditaments or any part thereof as a building estate."

(*d*) In a settlement of an undivided share, add here, Power to concur with co-owners in selling, &c., p. 1186.

(*e*) The power to sell undivided shares of minors, p. 1188, form LX., may be added here, if desired.

(*f*) Add if desired, Power to trustees to lay out money in improvements, p. 1193.

p. 1198, *and Provisions for indemnity and reimbursement of trustees*, p. 1200.] *Covenants by A. with C. and D. for title*, p. 280, *with the variations for a conveyance to uses.* PREC. I.

In witness, &c.

[*Schedules.*]

II.

STRICT Settlement *on marriage of* Freeholds *belonging to* Husband, *the* Limitations *extending to the* Sons *only of the marriage. A very* Short *Form without recitals.* PREC. II.

Parties, A., *husband*, 1; B., *wife*, 2; C. and D., *trustees*, 3: WITNESSETH that in consideration of an intended marriage between the sd A. and B., he the sd A. doth hereby, with the approbation of the sd B., grant unto the sd C. and D. and their heirs, *Parcels as in a Conveyance on Sale; General words*, p. 264; *Estate clause*, p. 264: To hold all the sd premises hereby granted Unto the sd C. and D. and their heirs to the use of the sd A. and his heirs until the sd intended marriage, and afterwards, *limitation to C. and D. of a term of* 1000 *years*, "to commence from the sd intended marriage," p. 1146, *with remainder to the use of A. for life*, p. 1146, *remainder to sons* "of the sd A., by the sd B.," *successively in tail* [*male*], p. 1150, *form* xii., *remainder*, to the use of the sd A. his heirs and assigns: And it is hereby declared that the sd C. and D. and the survivor of them, and the exors or admors of such survivor or other the trustees or trustee for the time being of these presents (hereinafter called the sd trustees or trustee) shall stand possessed of the sd term of 1000 years upon trust, by and out of the rents and profits of the sd premises, or by the sale of timber or minerals, or by mortgage of the sd premises or any part thereof for all or any

Parties. Witnesseth. Trusts of term.

PREC. II.

part of the sd term, to raise, pay, and apply the annual and gross sums following, that is to say, FIRST, an annuity of £——, commencing from the decease of the sd A., payable to the sd B., if surviving, during her life, on the usual quarter days in bar of dower; SECONDLY, the sum of £—— to be raised after the decease of the sd A., or in his lifetime with his consent in writing, and to be held in trust for all or any, to the exclusion of the others or other, of the children or remoter issue of the sd intended marriage other than any son or sons who before his or their respectively attaining the age of twenty-one years shall become entitled, whether in possession or remainder to the first estate in tail [male] under these presents, if more than one in such shares and in such manner in all respects as the sd A. shall by deed, revocable or irrevocable, or by will or codicil, appoint, AND IN DEFAULT of and subject to any such appointment in trust for all or any the children or child of the sd intended marriage (other than as aforesd) who being a son or sons attain the age of twenty-one years, or being a daughter or daughters attain that age or marry, and if more than one in equal shares, AND SUBJECT to the trusts hereinbefore contained, the sd sum of £——, or so much thereof as shall not become vested under the sd trusts, shall sink into the estate and not be raised; THIRDLY, after the death of the sd A., such annual sum for the maintenance, education, or benefit of each child or grandchild expectantly entitled to a portion as the sd trustees or trustee shall think fit, such annual sum not to exceed interest at the rate of £4 per cent. per annum on such portion, and to be so applied by the sd trustees or trustee, or to be paid by them or him to the guardians or guardian of such child or grandchild for the purpose aforesd, without seeing to the application thereof; FOURTHLY, such sum not exceeding a moiety of the then expectant presumptive or vested portion of any child or grandchild as the sd A. shall during his life in writing direct, or as the sd trustees or trustee shall after his decease think fit, to be raised after the decease of the

For raising jointure.

Portions.

Maintenance.

Advancement.

sd A., or in his lifetime if he shall in writing so direct, and to be applied for the advancement of such child or grandchild in such manner as the sd A., during his life, or the sd trustees or trustee after his death, shall think fit, but so that, if any such advance shall be made, an equal amount of the sd sum of £——, shall sink into the estate and shall not be raised. *Proviso as to surplus rents of term*, p. 1160, *clause in brackets at end of form* xx. PROVIDED ALWAYS and it is hereby declared, that during the minority of any tenant in tail [male] by purchase in possession of the sd premises, the sd trustees or trustee shall, &c., *continue short minority clause*, p. 1171, *note* (*f*), *mutatis mutandis*. PROVIDED ALWAYS, and it is hereby declared, that it shall be lawful for the sd A. during his life, and for the sd trustees or trustee during the minority of any tenant in tail by purchase in possession of the sd premises to grant, &c., *short leasing power*, p. 1203, *note* (*f*): PROVIDED ALSO, and it is hereby further declared, that the sd trustees or trustee shall, &c., *continue short powers of sale and exchange*, p. 1192; *instead of the paragraph commencing*, "and any disposition, &c.," *the power to sell surface and minerals separately*, p. 1183, *form* L., *may be substituted*: AND IT IS HEREBY declared that all the trusts and powers hereinbefore given to or exerciseable by the sd trustees or trustee, shall devolve upon and be exerciseable by the sd C. and D. and the survivor of them, and the exors or admors of such survivor, or other the trustees or trustee for the time being of these presents. *Short form of covenants for title*, p. 271, *with the variations for a conveyance to uses*.

IN WITNESS, &c.

PREC. II.

Minority clause.

Power of leasing.

Power of sale.

Declaration as to devolution of trusts and powers.

III.

PREC. III.

RESETTLEMENT *of* FREEHOLDS, COPYHOLDS, LEASEHOLDS, *and* HEIRLOOMS *by a* FATHER *and his* ELDEST SON, *on the latter Coming of Age, the* LIMITATIONS *being extended to* COLLATERALS. VARIATIONS *where the* POWERS ANNEXED *to the* FATHER'S LIFE ESTATE *are* PRESERVED, *and where an* ADDITIONAL JOINTURE *is secured to the* FATHER'S WIFE, *and* ADDITIONAL PORTIONS *to his* YOUNGER CHILDREN.

Parties, A., *father*, 1; B., *son*, 2; C. and D., *trustees of powers*, 3; E. and F., *trustees*, 4; G. and H., *trustees*, 5.

Recitals. *Recite, mutatis mutandis, prior settlement*, p. 1141; *Interim dealings with the property*, p. 1145; *State of the family*, p. 1145; *Disentailing assurance of freeholds*, p. 1143, *and of copyholds* [*or, Short recital of effect of settlement and disentailing assurance*, p. 1144]; *Title to leaseholds*, p. 1144; *Incumbrances*, p. 1141: AND WHAS, under or by virtue of the sd indre of settlement of, &c., and in the events which have happened, the articles and effects specified in the —— schedule hereto, now stand settled in trust for the sd A. for his life, with remainder to the sd B. absolutely: AND

Agreement for settlement. WHAS the said A. and B. have [after due consultation and consideration of their respective positions and interests in the premises and the circumstances of the case] agreed to make such settlement as is hereinafter contained of the sd respective freehold, copyhold, and leasehold hereditaments, described in the sd —— schedules hereto, and all other (if any) the hereditaments, of whatever tenure, in the respective parishes of, &c., which are now subject to their joint power of appointment, and also of the sd personal chattels and effects: NOW THIS INDRE

Witnesseth. WITNESSETH, that in pursuance of the sd agreement, and in consideration of the premises, they, the sd A. and

PREC. III.

B., in exercise of the power vested in them by the sd indre of, &c., *the disentailing assurance*, and of every other power enabling them or either of them in this behalf, do and each of them doth hereby direct and appoint that, *Freehold parcels by reference, if thought proper, to a schedule* [and all other (if any) the hereditaments of freehold tenure in the respective parishes of, &c., in the county of ——, which are subject to the joint power of appointment of the sd A. and B.], *General words*, p. 264, and all the estate, right, title and interest in or to the sd respective premises, which the sd A. and B. have power to appoint or dispose of, shall, but subject to the charges and incumbrances hereinbefore mentioned [*or*, specified in the —— schedule hereto] so far as the same affect the same premises respectively, and to the uses and estates limited or created by the sd indre of settlement, which preceded the estate in tail [male] thereby limited to the sd B. other than the estate thereby limited to the sd A. and his assigns for his life, and to the powers annexed to or exercisable during the continuance of such precedent uses or estates respectively other than as aforesd, and to the uses and estates limited or created, or to be limited or created in exercise of such powers, henceforth go and remain To SUCH USES, upon such trusts, and with and subject to such powers and provisions, as the sd A. and B. shall from time to time by any deed or deeds, revocable or irrevocable, jointly appoint, and in default of and subject to any such appointment, To THE USE that the sd B. and his assigns shall during the joint lives of the sd A. and B. receive, *continue limitation of rent-charge*, p. 1147, *with powers of distress and entry*, p. 1149, AND SUBJECT AND CHARGED as hereinbefore is mentioned, *limitation to E. and F. of term of 99 years*, p. 1146, (*g*) *remainder*, To THE USE of the sd A. and his assigns during his life, without impeachment of waste [*where the powers of the*

Appointment of freeholds.

Limitation to joint appointment of father and son.

Confirmation of father's life estate.

(*g*) In lieu of this term, power may be given to B. to limit a term for securing the rent-charge, see p. 1170, form XXXIII.

PREC. III.

old settlement are to be kept up, say, " in restoration, and by way of confirmation of the life estate limited to the sd A. by the sd indre of settlement of, &c."], AND FROM AND AFTER the decease of the sd A. [to the use that if the sd K., *A.'s wife,* shall survive the sd A., the sd K. and her assigns shall thenceforth during her life receive the yearly rent-charge of £——, to be in addition to the yearly rent-charge of £—— the payment whereof is secured to her and her assigns by the sd indre of settlement of, &c., and to be charged upon and issuing out of the sd premises hereby settled, *continue limitation of jointure rent-charge,* p. 1149, *with powers of distress and entry,* p. 1149 ; *limitation to G. and H. of term of* 600 *years,* p. 1146], *remainder to the use of B. for life without impeachment of waste,* p. 1146, (*a*) *remainder*

Additional jointure to father's wife.

(*a*) The following is a form of proviso determining the estates of male tenants for life on bankruptcy, &c., (which, it must be remembered, would be inoperative in case of the bankruptcy of the settlor himself, see p. 1055, note (*b*)) :—" PROVIDED ALWAYS, and it is hereby agreed and declared that if any person hereby made tenant for life of the sd premises hereby settled shall become bankrupt, or assign or charge his life estate in all or any part of the sd premises, or any part of such life estate, or attempt so to do, or if any other event shall happen whereby if such life estate belonged to him absolutely he would be wholly or partially deprived of the personal enjoyment thereof, then," if the life estate is not to be protected, say, " such person shall, during the remainder of his life, but without prejudice to the uses, estates, or powers preceding or overriding his life estate, and the uses and estates limited or created in exercise of such powers, stand seized of all the sd premises hereby settled in trust for the person or persons who would for the time being be entitled thereto, if he were dead, and in such case all powers annexed to his life estate shall cease to be exerciseable "; in this case the powers of leasing and sale will follow the forms at p. 1175, note (*e*), and p. 1182, note (*b*). If the life estate is to be protected, say, " the beneficial right of such person to the possession or receipt of the rents and profits of all the sd premises hereby settled during his life shall cease and determine as if he were dead, but the

Proviso determining tenancy for life on bankruptcy, &c.

PREC. III.

to the use of his first and other sons successively in tail, p. 1150, *remainder to his first and other daughters successively in tail male*, p. 1150, *remainder to the use of his first and other daughters in tail*, p. 1150, *followed by similar limitations to the other living sons of A. and their issue, with remainder*, To THE USE of every son of the sd A. hereafter to be born, successively in remainder one after another according to their respective seniorities, and the heirs of their respective bodies, AND IN DEFAULT of such issue, *to the daughters of A. successively in tail male, with like remainders to them in tail*, p. 1150, *remainder to collaterals, with an ultimate remainder*, To THE USE of the sd B., his heirs and assigns for ever [*Name and arms clause*, p. 1152]: *Trusts of term of* 99 *years to secure payment of annuity to B.*, "commencing

Trusts of terms.

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legal estate in the sd premises shall remain subsisting in him during the remainder of his life as a bare legal estate, without prejudice nevertheless to the future exercise of the powers hereby given to him as such tenant for life [other than and except, *specify any powers to be excepted*,] and the sd trustees or trustee shall take possession or enter into the receipt of the rents and profits of the sd premises hereby settled, and shall during the remainder of the life of the person whose beneficial enjoyment of the sd premises shall have ceased as aforesd, continue in such possession or receipt, and manage or superintend the management of the same premises with the same powers in that behalf as if they or he were in such possession or receipt during the minority of an infant tenant in tail [male] under the provision in that behalf hereinafter contained; [AND SHALL keep up and maintain the mansion-house, garden, and park at ——, in a proper state for occupation]; AND SHALL, out of the rents and profits of the sd premises, including the produce of timber, minerals, quarries, or brickfields, pay the expenses incurred in such management [and keeping up], or otherwise in respect of the premises, and any annual sums and the interest on any principal sums [and if in their or his absolute

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from the date of these presents," *this will be similar to the trusts of the term securing pin-money*, p. 1154, *form* XVIII., *mutatis mutandis*: [*Declaration of trust of* 600 *years term to secure additional jointure for K.*, p. 1155: AND UPON FURTHER TRUST, that the sd trustees or trustee shall, after the death of the sd A., or in his lifetime with his consent in writing, raise by mortgage of the sd premises, or by the sale of timber or minerals, or by and out of the rents and profits of the sd premises, or any of them, or by all or any

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discretion they or he shall think fit, any principal sums] charged on the same premises or any part thereof: AND SHALL during the remainder of the life of the person whose beneficial interest shall have determined, or during such shorter period continuous or discontinuous as the sd trustees or trustee shall in their or his absolute discretion think fit, pay or apply all or any part of the surplus of such rents and profits unto or for the personal maintenance, support, or benefit of all or any one or more to the exclusion of the others or other of the following persons, viz., the person whose beneficial interest shall have determined, and his wife, if any, and children and more remote issue, if any, whether minors or adults, and the other persons for the time being interested in remainder, whether absolutely, contingently, or otherwise in the sd premises hereby settled, or shall during such period and at such discretion as aforesd permit all or any of such persons personally to occupy all or any of the sd premises: AND SUBJECT to the discretionary trust or power lastly hereinbefore contained shall pay the surplus of the sd rents and profits to the person or persons who would be entitled to the possession or receipt of the rents and profits of the sd premises hereby settled if the person whose beneficial interest shall have so determined were dead." In the case of female tenants for life it would usually suffice to limit their estates during coverture to their separate use without power of anticipation. If it should be desired to go further and to protect their estates from alienation generally, the form would be less simple, especially if their estates are legal.

of the means aforesd, the sum of £——, and shall hold the same in trust for all, or such one or more exclusively of the others or other of the younger children of the sd A., meaning thereby the sd, *here insert names of A.'s younger children, who have already attained twenty-one, or being daughters have married*, and any other child or children of the sd A. now already or hereafter to be born, who being a son or sons, &c., *continue definition of younger children*, p. 1156, *form* xx., at such age or time, &c., *continue trusts of portions term*, p. 1156, *the powers throughout being given to A.*]; *Provision as to surplus rents of terms*, p. 1163; *Power to trustees to manage during minorities*, p. 1170, *or the short form at* p. 1171, *note* (*f*): PROVIDED ALWAYS, and it is hereby agreed and declared, that it shall be lawful for each [male] person hereby made tenant for life of the sd premises hereby settled other than the sd A., *continue power to subsequent tenants for life to charge jointures*, p. 1164, *saying*, "any jointure rentcharge or rent-charges not exceeding the annual sum of £—— for any wife of the sd B., nor exceeding the annual sum of £—— for the wife of any other person hereby made tenant for life, posterior in order of limitation to the sd B., to be charged, &c." [*Power to female tenants for life to limit rentcharges to husbands*, p. 1164]; *Power to subsequent tenants for life, including B., to charge portions*, p. 1167, *mutatis mutandis, and saying*, "of any sum not exceeding in the different events hereinafter specified, the different sums hereinafter mentioned, that is to say, for the younger child or children of the sd B., if he shall have but one younger child, the sum of £——, and if but two younger children the sum of £——, and if three or more younger children the sum of £——, and for the younger child or children of any other person hereby made tenant for life posterior in order of limitation to the sd B., if he [or she] shall have, &c., *as above*"; *Proviso that a charge of rentcharge, or portions, shall not take effect unless the person charging the same, or his issue, becomes entitled in possession*, p. 1168, *adding after*, "contained," "by any person hereby

Power to jointure.

Power to charge portions.

PREC. III.

made tenant for life posterior in order of limitation to the sd B.;" *Proviso limiting total amount chargeable for rentcharges and portions*, p. 1168, *mutatis mutandis*. *Power to lease for twenty-one years*, p. 1175, *with the variation in the note, if the name and arms clause*, p. 1152, *is inserted* [*to grant building, &c., leases*, p. 1175]; (*b*) *To accept surrenders of leases, &c.*, p. 1178 (*c*); *To make agreements for leases, &c.*, p. 1180 (*d*); [*If there is a limitation to tenants in common add proviso as to powers of leasing*, p. 1181, *form* XLV.]; *Commencement of powers of sale, &c.*, p. 1182, *form* XLVII., *with variation in note if the name and arms clause*, p. 1152, *is inserted*; *Power to sell or exchange*, p. 1183 (*e*); *Power to sell, &c., subject to conditions*, p. 1185; [*If desired, power to raise money on mortgage*, p. 1185 (*f*)]; *Power to execute assurances, &c.*, p. 1187; [*If there is a limitation to tenants in common, add, Provision as to exercise of powers of sale, &c.*, p. 1187 (*g*)]; *Declaration as to rents reserved on exchanges, &c.*, p. 1188; *Trusts of sale moneys, &c.*, p. 1189 (*h*).

Further witnesseth.

AND THIS INDRE ALSO WITNESSETH that in further pursuance of the sd agreement, and in consideration of the premises, they, the sd A. and B., in exercise of the power vested in them by the sd indre of, &c., *the disentailing*

(*b*) For a mining property insert here, Power to grant mining leases, p. 1176, and leases of easements, p. 1177.

(*c*) For a building estate insert here, Power to lay out property for building, p. 1178. For a mining or building estate insert, Power to accept leases of easements, p. 1179.

(*d*) If a manor is settled, insert here, Power to grant licenses to copyholders, p. 1180.

(*e*) If an undivided share is settled add, Power to partition, p. 1183. If there are minerals, Power to sell, &c., surface and minerals separately, p. 1183. In a settlement of a manor, Power of enfranchisement, p. 1184. For a building or mining estate, Powers to grant and purchase easements, p. 1184.

(*f*) In a settlement of an undivided share, add, Power to concur with coowners in selling, &c., p. 1186.

(*g*) The power to sell undivided shares of minors, p. 1188, may be added here if desired.

(*h*) Add if desired, Power to trustees to lay out money in improvements, p. 1193.

PREC. III.

assurance, and of every other power enabling them or either of them, in this behalf, do, and each of them doth, hereby direct and appoint that, *Copyhold parcels, by reference, if thought proper, to a schedule*, [and all other, if any, the hereditaments of copyhold or customary tenure in the respective parishes of, &c., in the county of ——, which are subject to the joint appointment of the sd A. and B.]; *General words*, p. 264; *All estate clause, as above*, p. 1209, shall henceforth, BUT SUBJECT, &c., *as in the case of freeholds, mutatis mutandis*, remain and be UPON SUCH TRUSTS, and with and subject to such powers and provisions as shall correspond with the uses, trusts, powers, and provisions hereinbefore limited, declared, and contained concerning the freehold hereditaments hereby settled, or as near thereto as the different tenure of the property will permit, but not so as to increase or multiply charges or powers of charging: AND THIS INDRE ALSO WITNESSETH that in further pursuance of the sd agreement, and in consideration of the premises, each of them, the sd A. and B., doth hereby, according to his estate and interest, assign unto the sd C. and D., their exors, admors, and assigns, *Leasehold parcels*, "with the rights, members, and appurtenances thereof," *Estate clause*, p. 264; *Habendum*, p. 267, SUBJECT, &c., *as in the case of freeholds, mutatis mutandis*, UPON TRUST that the sd C. and D., and the survivor of them, &c., *continue as in* p. 1194, *form* LXVI.: AND THIS INDRE ALSO WITNESSETH that in further pursuance, &c., and in consideration, &c., each of them, the sd A. and B., doth hereby, according to his estate and interest, assign unto the sd C. and D., their exors, admors, and assigns, ALL AND SINGULAR the sd ——, and other articles and effects described in the —— schedule hereto: TO HAVE AND TO HOLD the same premises unto the sd C. and D., their exors, admors, and assigns, upon trust, &c., *continue trusts of chattels as heirlooms*, p. 1195. [*Where the powers in the old settlement are to be kept up, add, though it is not absolutely necessary, Proviso that powers of former settlement shall override uses of resettlement*, p. 1197; *Where the powers*

Appointment of copyholds.

Further witnesseth.

Assignment of leaseholds.

Further witnesseth.

Assignment of heirlooms.

Provision where powers of old settlement are kept up

PREC. III.

or destroyed.

in the old settlement are to be destroyed, say, "PROVIDED ALWAYS, and the sd A. doth hereby release unto the sd B. each and every power given or reserved to the sd A. by the sd indre of settlement of, &c., or which, but for this present proviso, would hereafter be exercisable by him, the sd A., under, or by virtue of, such settlement"]: AND IT IS HEREBY AGREED AND DECLARED that in addition, *continue short trustee clause,* p. 1090, *form* LXIX., *so far as relates to indemnity of trustees,* [*or if thought expedient, in lieu of that clause insert, Trustees' receipt clause, p.* 1088: *Power to appoint new trustees with the variations for several sets of trustees,* p. 1198, *and provisions for indemnity and reimbursement of trustees,* p. 1200]: AND THE SD A., so far as relates to the title to, and further assurance of, the sd premises hereby settled during his life, and the sd B., so far as relates to the title to, and further assurance of, the reversion of the same premises expectant on the death of the sd A., but not further or otherwise, doth hereby, &c., *continue covenants for title with,* "C. and D., their heirs, exors, admors, and assigns," p. 280, *mutatis mutandis, with the variations for a conveyance to uses, and for a conveyance subject to incumbrances, saying,* "notwithstanding anything by them, the sd A. and B., or either of them, [or any of their respective ancestors or testators,] done, &c.," *substituting,* "C. and D., their," *for,* "*purchaser,* his," *and saying,* "to appoint such of the sd premises hereby settled as are of freehold or copyhold tenure, to the uses upon the trusts and in manner and subject as aforesd, and to assign such of the sd premises hereby settled as are of leasehold tenure, &c.," *and adding after the covenant for quiet enjoyment,* "other than, and except any person or persons claiming in respect of any of the uses, estates, charges, or incumbrances, subject to which the sd premises are expressed to be hereby settled."

Covenants for title.

IN WITNESS, &c.

[*Schedules.*]

IV.

SETTLEMENT *on Marriage by a* TENANT *for* LIFE *in* POSSESSION *of* SETTLED ESTATES, CHARGING PIN-MONEY *and a* JOINTURE *for his wife, and* PORTIONS *for younger children.* (*a*) PREC. IV.

Parties, A., *husband*, 1; B., *wife*, 2; C. and D., *trustees of pin-money, jointure and portions terms*, 3. *Recite intended marriage*, p. 1039, *Settlement or Will under which A. is tenant for life of estates, and giving power of jointuring and charging portions, which should be recited fully, and if A. is first tenant for life recite the limitation to him for life, otherwise recite that the estates were thereby limited*, "to certain uses under which the sd. A. is now tenant for life in possession of the sd estates": AND WHAS upon the treaty for the sd intended marriage, it was agreed that the sd A. should make such provision for the sd B. and his younger children by her as is hereinafter contained: NOW THIS INDRE WITNESSETH that in pursuance of the sd agreement, and in consideration of the sd intended marriage, and of the sum of ten shillings to the sd A., paid by the sd C. and D., He, the sd A., doth hereby bargain, sell, and demise (*b*) unto the sd C. and D., their exors, admors, and assigns, ALL AND SINGULAR the manors, messuages, lands, tenements, and hereditaments of freehold tenure, which are now subject to the subsisting uses of the hereinbefore recited indre of settlement, *or*, "will," [*or if part only of the estates are to be charged set out parcels*], *General words*, p. 264, *omitting the estate clause*: TO HAVE AND TO HOLD all the sd premises hereinbefore expressed to be hereby demised UNTO the sd C. and D., their exors,

Recitals.

Agreement.

Witnesseth.

Demise.

Habendum.

(*a*) This precedent is adapted to the forms in this collection; it will, of course, be understood that the details must be adapted to the forms used in the particular settlement.

(*b*) See above, p. 775, note.

PREC. IV.

Limitation of pin-money term.

admors, and assigns, for the term of 99 years, to commence from the solemnization of the sd intended marriage, if the sd A. and B. shall both so long live, UPON TRUST that the sd C. and D., and the survivor of them, &c., *trusts of pin-money term, omitting the clause bracketed at the end*, p. 1154: AND THIS INDRE ALSO WITNESSETH that in further pursuance of the sd agreement, and in consideration of the sd intended marriage, and in exercise of the power vested in him for this purpose by the sd indre of settlement, *or*, "will," and of every or any other power in this behalf him enabling, he, the sd A., doth hereby limit and appoint To THE USE of the sd B., and her assigns during her life, in case the sd intended marriage shall take effect and she shall survive him the sd A., a yearly rent-charge of £—— by way of jointure, to be charged upon and issuing out of all and singular the sd hereditaments and premises hereinbefore demised, to be considered as accruing from day to day, but to be payable quarterly on, &c., *specify days*, *or*, "on the usual quarter days," without any deduction [except for succession duty], the first of such payments to be made on such of the sd quarterly days as shall happen after the death of the sd A., if the sd B. shall then be living: AND FURTHER that, *power of distress*, p. 1149: AND FURTHER that, *power of entry*, p. 1149 [*where the settlement requires that the terms for securing the jointure and portions should be distinct, here limit a term of* 200 *years to C. and D. to secure the jointure as below, and declare the trusts of it*, p. 1155:] AND THIS INDRE ALSO WITNESSETH that in further pursuance of the sd agreement, and in consideration of the sd intended marriage, and in exercise, &c., *as above*, he, the sd A., doth hereby charge all the sd premises hereinbefore demised, subject to the sd yearly rent-charge of £——, and the powers and remedies hereinbefore contained for securing the same, with the payment to the younger child or children of him, the sd A., by the sd B., meaning thereby any child or children who being a son or

Further witnesseth.

Charge of jointure.

Secured by powers of distress and entry.

Further witnesseth.

Charge of portions.

sons shall attain the age of twenty-one years, or being a daughter or daughters attain that age or marry, other than any son or sons who, before his or their respectively attaining the age of twenty-one years, shall become (*c*) entitled [or any daughter or daughters who before her or their respectively attaining that age or marrying shall become indefeasibly entitled], whether in possession or remainder, to the hereditaments and premises comprised in or settled by the sd indre of settlement, *or*, "will," for the first estate in tail [male or in tail] [or the issue of any such younger child or children, such issue to be born and take vested interests within twenty-one years from the death of the sd A.] of the sum of £—— [of, in the different events hereinafter specified, the different sums hereinafter mentioned, that is to say, if there shall be but one such younger child the sum of £——, if there shall be only two such younger children the sum of £——, and if there shall be three or more such younger children the sum of £——], such sum to be an interest vested in such younger child or children, or such one or more, exclusively of the others or other of such younger children [or the issue of such child or children], at such age or time, or respective ages or times, if more than one, in such shares, and with such future or other trusts for the benefit of any such younger child or children [or issue], upon such conditions, with such restrictions, and in such manner, as the sd A. shall, by any deed or deeds, revocable or irrevocable, or by will or codicil, appoint, AND IN DEFAULT of, and subject to any appointment under the power lastly hereinbefore contained, with the payment of the sd sum of £—— [£—— or £——, as the case may be], to such younger child or children, and if more than one in equal shares as tenants in common, but not to be raiseable or payable during the life of the sd A., without his consent in writing, PROVIDED ALWAYS and the sd A. doth hereby further

(*c*) Where the eldest son of the marriage is not necessarily the first tenant in tail [male], say, "indefeasibly."

PREC. IV.

appoint that, &c., *Hotchpot clause*, p. 1157, AND THE SD A. doth hereby further appoint that it shall be lawful for the sd C. and D., and the survivor, &c., at any time after the death of the sd A., or in his lifetime, with his consent in writing, to raise any part or parts, &c., *continue advancement clause*, p. 1158: AND ALSO doth hereby charge all the sd premises hereinbefore demised, but subject and without prejudice as aforesd, with such annual sum of money as shall be equal to interest at the rate of £4 per cent. per annum on the expectant portion or portions of the sd younger child or children [or more remote issue], such annual sum to be clear of all deductions except succession duty, to commence after the death of the sd A., and to be applied at the discretion of the sd C. and D., or the survivor, &c., for the maintenance and education, or benefit, &c., *continue maintenance clause*, p. 1157: AND THIS INDRE ALSO WITNESSETH, that in further pursuance of the sd agreement, and in consideration of the sd intended marriage, and in exercise, &c., *as above*, he, the sd A., doth hereby appoint all and singular the sd hereditaments and premises hereinbefore charged with the sd [jointure rent-charge and] portion moneys as aforesd, unto and to the use of the sd C. and D., (*d*) their exors, admors, and assigns, for the term of 1000 years, to commence from the death of the sd A., without impeachment of waste [UPON TRUST, &c., *trusts of term to secure jointure rent-charge*, p. 1155, *omitting the clause bracketed at the end*, and also, but] subject and without prejudice to the sd jointure rent-charge, and to the powers, remedies [term of years] and trusts hereinbefore limited and contained for securing the payment thereof, UPON TRUST, that the sd C. and D., or the survivor of them, or the exors or admors of such survivor shall by mortgage of the same premises, or any of them, for all or any part of the same term, or by the sale of timber or minerals, or by and out

Further witnesseth.

Limitation of term.

Trusts of term.

(*d*) See above, p. 1202, note (*c*).

of the rents and profits of the same premises, or by all or any of the means aforesd, raise the said sum of £—— [£—— or £——, as the case may be], or so much thereof as shall become raiseable, with such interest thereon, and such annual sums for maintenance, and such sums for advancement as may become raiseable as aforesd, and any costs and expenses to be incurred in or about the raising of the same and the execution of the trusts of such term, and subject to and after payment of such costs and expenses, shall pay and apply the moneys so raised to or between, or for the maintenance, education, or advancement of the younger child or children [or issue] of the sd A. by the sd B., or any of them, or otherwise, in such manner as the same respectively ought to be paid and applied by virtue of the charges and provisions in that behalf hereinbefore contained, and so as to satisfy the same. *Proviso as to payment of surplus rents to reversioners*, p. 1163, *mutatis mutandis*. *Covenants by A. with C. and D.*, "their exors, admors, and assigns," (*b*) that notwithstanding anything by him, the sd A., done or knowingly omitted or suffered, he, the sd A., now has full power to charge all the sd premises with the several annual and principal sums hereinbefore mentioned, in manner hereinbefore appearing, and also to demise and appoint the sd premises to the sd C. and D., their exors, admors, and assigns, for the respective terms, and in manner aforesd, AND FURTHER, *covenant for further assurance*, p. 270.

Covenants for title.

IN WITNESS, &c.

(*b*) If there are separate sets of trustees for the different terms, A. will covenant with, "C. and D., their exors, admors, and assigns," and also as a separate covenant with, "the sd, *other trustees*, their exors, admors, and assigns, &c."

V.

PREC. V.

SETTLEMENT *on Marriage by* HUSBAND'S FATHER *of* FREEHOLDS *on* HUSBAND *and* WIFE *for Life, with remainder to their* ISSUE, *as they may* APPOINT, *in* DEFAULT EQUALLY, WITHOUT *trust for* SALE (*c*).

Parties, A., *husband's father*, 1; B., *husband*, 2; C., *wife*, 3; D., E., and F., *trustees*, 4. *Recite intended marriage*, p. 1039; *Title of A. to freeholds*, p. 1140: AND WHAS, upon the treaty for the sd intended marriage, it was agreed that the sd A. should convey and assure the sd hereditaments and premises to the uses and in manner hereinafter declared and expressed concerning the same: NOW THIS INDENTURE WITNESSETH, that in pursuance of the sd agreement, and in consideration of the sd intended marriage, the sd A. doth hereby grant unto the sd D., E., and F., and their heirs, *Parcels, as in a Conveyance on Sale; General words*, p. 264; *Estate clause*, p. 264: TO HAVE AND TO HOLD the sd hereditaments and premises hereby granted UNTO the sd D., E., and F., and their heirs, TO THE USES, upon the trusts, and with and subject to the powers and provisions hereinafter declared and expressed of and concerning the same, that is to say, TO THE USE of the sd A. and his heirs until the sd intended marriage, and from and after the sd marriage, TO THE USE of the sd B. and his assigns during his life, without impeachment of waste, and after the death of the sd B., TO THE USE of the sd C. and her assigns during her life, without impeachment of waste, and after the decease of the survivor of them, the sd B. and C., *limitation to issue as parents or survivor shall appoint*, p. 1151, *form* XIV., *remainder to children as tenants in*

Recitals.

Agreement for settlement.

Witnesseth.

Conveyance.

Habendum.

Limitations.

(*c*) For similar settlements effected by a trust for sale, see above, SETTLEMENTS PERSONAL, Precedents VI., VII., VIII., and IX.

common in fee, with accruer on death under twenty-one, &c., p. 1151, *form* XV., *as corrected in the errata* (*d*), *with remainder*, To THE USE of the sd A., his heirs and assigns for ever: PROVIDED ALWAYS, and it is hereby agreed and declared, that no child who or whose issue shall take under any appointment to be made in exercise of the powers hereinbefore contained, or either of them, shall be entitled to any share of the unappointed part of the sd hereditaments and premises, without bringing the share or shares appointed to him or her, or to his or her issue into hotchpot, and accounting for the same accordingly: AND FOR the purpose of giving effect to the provision lastly hereinbefore contained, the appointed and unappointed parts respectively of the sd hereditaments and premises shall, as far as may be necessary, be valued (in default of any direction or provision in that behalf contained in any such appointment as aforesd) in such manner, and as at such time, or respective times, as the sd D., E., and F., or the survivors or survivor of them, or the exors or admors of such survivor shall consider fair and proper, and such valuation shall be conclusive. *Advancement clause*, p. 1060, *saying*, "to raise by mortgage, with or without power of sale, of all or any part or parts of the sd hereditaments and premises, any part or parts, &c.": AND IT IS HEREBY AGREED AND DECLARED that the mode of valuing such share for the purpose of the provision lastly hereinbefore contained shall be in the absolute discretion of the sd trustees or trustee, and further that no person advancing money on any such mortgage shall be bound to enquire as to the propriety of raising such money or the amount raiseable or to see to the application thereof: PROVIDED ALWAYS, and it is hereby agreed and declared, that if any person, who would but for this present provision for the time being be beneficially entitled under any such appointment as aforesd, or in default of

Hotchpot clause.

Advancement clause.

Power of management during minorities.

(*d*) If preferred, insert a limitation to all the children as tenants in common in tail general with cross remainders, p. 1150, form XIII., *mutatis mutandis*.

PARC. V.

appointment, to the possession or receipt of the rents and profits of the sd hereditaments and premises hereby settled, or of any undivided part or share thereof, for any estate by purchase, *continue power to manage during minorities*, p. 1170 : AND IT IS HEREBY AGREED AND DECLARED, that it shall be lawful for the sd B. during his life, and after his death for the sd C. during her life, and after the death of the survivor of the sd B. and C. for the sd D., E., and F., or the survivors or survivor of them, or the exors or admors of such survivor during the minority of any person, who if of full age would be beneficially entitled, under any such appointment as aforesd, or in default of appointment, to the possession or receipt of the rents and profits of the hereditaments hereby settled, or of any undivided share or shares thereof, to demise, &c., *insert such of the leasing powers, &c.*, pp. 1174 *et seq.*, *as may be appropriate :* AND IT IS HEREBY AGREED AND DECLARED, that it shall be lawful for the sd D., E., and F., or the survivors or survivor of them, or the exors or admors of such survivor, during the life of the sd B., with his consent in writing, and after his death and during the life of the sd C. with her consent in writing, and after the death of the survivor of the sd B. and C. and during the minority, &c., *as above, continue commencement of powers of sale, &c.*, p. 1182, *including the reference to undivided shares, and insert such of the powers at* pp. 1183 *et seq.*, *as may be appropriate :* AND IT IS HEREBY AGREED AND DECLARED, that in addition, &c., *continue short trustee clause*, p. 1090, *form* LXIX., *so far as relates to indemnity of trustees. Covenants by* A. *with trustees for title*, p. 275 ; *with variations for a conveyance to uses, see* p. 269.

Powers of leasing, &c.

Powers of sale, &c.

Trustee clause.

IN WITNESS, &c.

VI.

SETTLEMENT *of* FREEHOLDS *in* COMPLIANCE *with a* CONDITION *in a* WILL. *A short form* (*e*). PREC. VI.

Parties, A., *settlor*, 1; B. and C., *trustees of will*, 2. *Recite seisin in fee of A. of estate to be settled; Will of the testator imposing the condition; Death and probate:* AND WHAS the sd A. is desirous, for the purpose of complying with the condition in the sd recited will, of making such settlement as is hereby effected of the hereditaments hereinafter mentioned: NOW THIS INDRE WITNESSETH that in pursuance of the sd desire, and in consideration of the premises, he, the sd A., doth hereby grant unto the sd B. and C., and their heirs, *Parcels; General words*, p. 264; *Estate clause*, p. 264; *Habendum*, p. 266, UNTO the sd B. and C., and their heirs, TO THE USES, upon the trusts, and with and subject to the powers and provisions to, upon, with, and subject to which the same hereditaments and premises ought to be limited or settled, for the purpose of performing and complying with the condition contained in the sd recited will as aforesd [and subject thereto to the use of the sd A., his heirs and assigns]. *Covenants by A. with B. and C. for title*, p. 275, *with variations for a conveyance to uses, see* pp. 269 *et seq.*

Recitals.

Witnesseth.

IN WITNESS, &c.

VII.

VOLUNTARY SETTLEMENT *of* FREEHOLDS *by a* FATHER *on his* SON *and the* SON'S MALE ISSUE, *the* LIMITATIONS *being extended as far as the* RULES PREC. VII.

(*e*) That a conveyance in a general form is a sufficient compliance with a condition, see *Scarlett* v. *Lord Abinger*, 34 Beav. 338.

PREC. VII.

against PERPETUITIES *will allow; the* FATHER *retaining an* ANNUITY *for his* LIFE SECURED *by a Term, and a* POWER *to* CHARGE *a gross* SUM. TRUSTS *for* DISCHARGE *of* INCUMBRANCES. VARIATIONS *where the settlement is* REVOCABLE.

Parties A., *father*, 1; B., "the only son of the sd A.," 2; C. and D., *trustees* (*a*), 3. *Recite title of A. to freeholds*, p. 1140; *subject to leases*, p. 1141, *and mortgages*, p. 1141: AND WHAS the sd B. has three sons only, namely, K., L., and M.: AND WHAS the sd A. is desirous of making such settlement of the sd hereditaments and premises as is hereinafter contained [and it is his intention that such settlement shall be irrevocable]: NOW THIS INDRE WITNESSETH that in consideration of the natural love and affection of the sd A. for his son, the sd B., and for divers other good causes and considerations, he, the sd A., doth hereby grant unto the sd C. and D., and their heirs, *Parcels, general words, estate clause, as in a Conveyance on Sale*: TO HAVE AND TO HOLD all the sd premises hereinbefore expressed to be hereby granted UNTO the sd C. and D., and their heirs, SUBJECT to the charges and incumbrances hereinbefore mentioned, [*or*, specified in the schedule hereto], so far as the same affect the same premises respectively, and to the leases and tenancies aforesd: TO THE USES, upon the trusts, and with and subject to the powers and provisions hereinafter declared and expressed concerning the same (that is to say), *Limitation to C. and D. for a term of* 1000 *years*, "to commence from the date of these presents," p. 1146, *remainder to B. for life*, p. 1146, *remainder*, TO THE USE of the sd K., L., and M., in succession, one after the other, according to seniority, during their respective lives, with a limitation by way of remainder, immediately after the decease of each of them the sd K., L., and M., TO THE USE of his first and every other son, &c., *in tail male*, p. 1150: AND AFTER the decease of all of them

Recitals.

Desire to make settlement.

Witnesseth.

Habendum.

Limitations.

(*a*) It will be observed that in this precedent one term is used for several purposes, so that only one set of trustees is required.

the sd K., L., and M., and in default of such issue of all of them, To THE USE of every son of the sd B., hereafter to be born, *in tail male*, p. 1150, *remainder*, To THE USE of the sd A., his heirs and assigns: AND IT IS HEREBY AGREED AND DECLARED that the sd premises are hereby limited to the use of the sd C. and D., their exors, admors, and assigns, for the sd term of 1000 years, upon trust, *to raise annuity of £——*, "commencing from the date of these presents," *payable to A.*, p. 1154, *form* XVIII., *mutatis mutandis:* AND UPON FURTHER TRUST, &c., *trust for accumulation*, p. 1162, *form* XXII. (*f*): AND UPON FURTHER TRUST, that if there shall be any younger child or children of the sd B., meaning, &c., *continue trusts of portions term*, p. 1156 (*g*). *Power to male tenants for life to jointure*, p. 1164, *omitting the words*, "other than the sd ——;" *Power to subsequent tenants for life to charge portions*, p. 1167; *Proviso as to events in which rent-charges or portions are to take effect*, p. 1168; *Proviso limiting total amount chargeable*, p. 1168; *Power to A. to charge a gross sum*, "to be raised forthwith, or at any time, in priority to all principal or annual sums, charged or chargeable under these presents," p. 1169; *Power to limit a term for securing sum charged*, p. 1170; *Power to manage during minorities*, p. 1170, *with the variation in note* (*e*), p. 1173; *Powers of leasing, &c., commencing as in* p. 1175, *form* XXXVI., *the powers may be the same as in Precedent* I.: AND IT IS HEREBY AGREED AND DECLARED, that it shall be lawful for the sd C. and D., and the survivor of them, and the exors or admors of such survivor, during the life of the sd B. with his consent in

Trusts of term to secure annuity.

(*f*) If provision for discharging incumbrances is made by policies on the lives of A. and B., a recital of the title to, and if necessary an assignment of, the policies will be inserted, and trusts declared of the policy moneys, and trusts of term for securing payment of premiums, p. 1160, form XXI., will be substituted for the trust for accumulation.

(*g*) In a settlement of this nature it may be advisable to omit the trust for raising portions, and to give a power to B. to charge portions. This can be done by omitting the words, "other than the sd ——," in the power to charge portions.

PREC. VII.

writing, and after his death during the life of any person, &c., *continue commencement of powers of sale and exchange*, p. 1182, *form* XLVII., *the powers may be the same as in Precedent* I. *The power to raise money on mortgage, form* LVI., *should be inserted. Short trustee clause, as in Precedent* I. *Covenants by A., with C. and D., for title*, p. 275, *form* I., *with variations for conveyance to uses, see* pp. 269 *et seq.* [*Power of revocation*, p. 1091, *form* LXXII.]

IN WITNESS, &c.

WILLS. (*a*)

INTRODUCTORY.

Commencement.

1. I, *testator*, late of (*b*) ——, and now of ——, hereby revoke all former wills, codicils, and testamentary instruments (*c*) made by me, and declare this to be my last will.

The same. Short form.

II. THIS is the last and only will of me, *testator*, of ——.

Concurrent will.

III. I, *testator*, of ——, declare this to be my last will, which I make for the purpose only of disposing of the estate and property hereinafter mentioned, and to the intent that the same shall take effect concurrently with and independently of another will of even date herewith, relating to my property situate at, &c., and not in any way affecting the property hereby disposed of.

Codicil.

IV. I, *testator*, of ——, hereby declare this to be a [second] codicil to my will, which bears date the —— day of ——.

Direction as to burial (*d*).

V. I wish to be buried wherever I may happen to die, [*or*, in the family vault at ——,] and that my funeral shall be as simple and inexpensive as possible.

Confirmation of settlement.

VI. I confirm the settlement [several settlements] exe-

(*a*) See Davidson, Prec., vol. 4; Elphinstone, Introd. Conv., 362.

(*b*) It may save trouble in establishing the testator's identity if any past, as well as present address, by which he may be registered in the books of the Bank of England, or any Company, &c., as the holder of any stocks or shares, &c., is given.

(*c*) See *re Savage*, L. R. 2 P. & D. 78.

(*d*) It may be better not to insert directions as to burial in the will, as it may not be opened till after the funeral.

cuted on my marriage [with my present wife], and I declare that the provisions hereby made for my wife and children [and other issue] are intended to be in addition to and not in satisfaction of those made or covenanted to be made for them respectively in and by such settlement [respective settlements].

SPECIFIC LEGACIES.

Stock.

I. I BEQUEATH to A., of ——, the sum of £—— £3 per cent. Consolidated Bank Annuities [part of a larger sum of like Annuities] now standing in my name.

Another form.

II. I BEQUEATH to A., of ——, all the stock in the public funds of the United Kingdom of which I may be possessed at my decease, *or*, "all my shares in the —— Company."

The same, in trust.

III. I BEQUEATH to, *trustees*, their exors, admors, and assigns, the sum of £—— £3 per cent. Reduced Annuities, *or*, "New £3 per cent. Annuities," now standing in my name, upon the trusts hereinafter declared concerning the same.

Ready money.

IV. I BEQUEATH to —— all the ready money which at my decease may be in my house or standing to the credit of my current account at my bankers.

Bond debt.

V. I BEQUEATH to —— all the principal moneys and interest which shall be owing to me at my death on the bond of ——, and also the sd bond. (*e*)

Mortgage debt.

VI. I BEQUEATH to —— all the principal moneys and interest which shall be owing to me at the time of my death on a mortgage of the —— estate, *or*, "of hereditaments situate at ——, in the parish of ——, and county of ——," *or*, "of property belonging to ——," *or as the case may be*,

(*e*) It may be convenient to appoint the legatee special exor as to the debt. See below, APPOINTMENT OF EXECUTORS; Davidson, Prec., vol. 4, 2nd ed., p. 102, note (*a*).

[*if the description of the mortgage deed is known, say,* "under an indre, dated, &c.,"] (*e*), and I devise and bequeath all the hereditaments of whatever tenure [and other property] comprised in such mortgage unto and to the use of the sd ——, his heirs, exors, admors, and assigns, according to the nature thereof respectively, subject to the equity of redemption subsisting therein.

Release of debt to debtor (*f*).

VII. I RELEASE and forgive to ——, or to his representatives if he should die in my lifetime, the sum of £—— now due to me from him on his bond, [on mortgage of property at, &c.,] or so much thereof as may remain owing to me at my death, and all interest for the same, and I direct that the sd bond shall be cancelled and given up to him or them, [*or*, that the hereditaments and property comprised in such mortgage shall be released and reconveyed accordingly, discharged from the said mortgage debt and interest, and all claims in respect thereof].

Release of all debts owing from legatee.

VIII. I RELEASE and forgive to ——, or to his representatives if he should die in my lifetime, all and every principal sums or sum and interest whatsoever, which may be due or owing from him or them to me at my decease on the security of any bond or bonds, bill or bills, note or notes, or bill, otherwise howsoever, and I direct that every such bond, note, or other security shall be released and given up to the sd —— or his representatives.

Declaration that sums advanced by testator were gifts, or have been forgiven.

IX. I DECLARE that all sums at any time or times advanced or paid by me to or on account of —— were intended by me as gifts or have since been forgiven by me, and that nothing is now due to me from the sd —— in respect of any such advances or payments, and no claim shall or will be made against him, or his estate if dead, in respect thereof.

(*e*) See note on previous page.

(*f*) The forgiveness of a debt is in law a legacy, and liable to ademption, and to lapse by the death of the legatee in the testator's lifetime (unless this is expressly provided for, as in the text), and is chargeable with legacy duty. If the debt has been forgiven before the date of the will, this should, of course, be declared, as in form IX., so as to avoid duty.

Jewellery, &c.

X. I BEQUEATH to —— all my watches, jewellery, trinkets, and personal ornaments.

Wearing apparel.

XI. I BEQUEATH my wearing apparel to my servant ——, if he shall be in my service at the time of my death.

Wines and consumable stores.

XII. I BEQUEATH to —— all my wines, liquors, provisions and consumable stores.

Wines to be selected.

XIII. I BEQUEATH to —— —— dozen of my wines, to be selected by him.

Horses, &c.

XIV. I BEQUEATH to —— my carriages, horses, harness, saddlery, and stable furniture and equipments, *or*, "any one of my carriages, and any pair of my horses, to be selected by him."

Papers and MSS.

XV. I BEQUEATH to —— all my account books, letters, papers, memoranda, and manuscripts, except deeds and documents of title, and securities for money.

Request to destroy letters, &c.

XVI. I REQUEST —— to examine all my letters, letter-books, and papers, and to destroy such of the same as he shall consider ought not to be preserved, and I declare that it shall be in his entire discretion whether to show or disclose the same or the contents thereof to any other person. (*g*)

Furniture and personal effects, &c. Full form.

XVII. I BEQUEATH to —— all my watches, jewels, trinkets, and wearing apparel, and all my furniture, plate, plated goods, linen, glass, china, books, manuscripts, pictures, prints, statuary, musical instruments, articles of vertu, and all other articles of personal, domestic, or household use or ornament, [other than fixtures, and I also bequeath to the sd —— all my] wines, liquors and consumable stores and provisions, and all my horses, carriages, harness, saddlery, and stable furniture and equipments, and all my plants and garden tools and implements.

The same. Short form.

XVIII. I BEQUEATH to —— all articles of personal or domestic or household use or ornament belonging to me.

Effects in house. Full form.

XIX. I BEQUEATH to —— all the furniture, &c., *as in form*

(*g*) This form would not, of course, prevent the exors from examining the papers if they think fit. If it is wished to prevent this, the papers should be bequeathed and the legatee made special exor as to them. See below, APPOINTMENT OF EXECUTORS.

XVII., which at the time of my death shall be in, about, or belonging to or appropriated or ordered for my [principal place of] residence, or the outbuildings, stables, coach-houses, gardens, or pleasure grounds thereof.

XX. I BEQUEATH to —— all the effects, other than money or securities for money, [and other than fixtures,] which shall at the time of my death be in or about or belonging to or appropriated for my dwelling-house. The same. Short form.

XXI. I BEQUEATH to my wife —— such articles of furniture, plate, or other effects of domestic or household use or ornament as she shall within —— calendar months from my death select, to a value not exceeding £——, such value in case of dispute to be determined by my exors in such manner as they shall think proper. Bequest to wife of furniture, &c., to be selected by her.

XXII. I AUTHORISE my exors to sell to my wife —— at a valuation to be made in such manner as they shall think fit, all or any part of my furniture, plate, and other household effects, and to allow the purchase-money to be paid by instalments or otherwise, with interest at such rate and in such manner as they shall think fit, with or without taking security, and I declare that the purchase-money for the same shall form part of my residuary estate. Special power to sell furniture to wife at valuation.

XXIII. I BEQUEATH the use and enjoyment of all my furniture, &c., *or as the case may be*, to my wife —— during her life [widowhood], she keeping the same properly insured against fire, and I declare that after her death [or marriage], the same shall fall into my residuary estate; And I declare that it shall not be necessary to take an inventory thereof, and that my exors shall not be concerned to see to the insurance thereof, or be liable for any loss or damage that may happen thereto from any cause whatsoever. Furniture or other effects to wife for life or widowhood without trustees. No inventory.

XXIV. I BEQUEATH all, &c., to, *trustees*, their exors and admors, in trust to permit my wife —— to have the use and enjoyment thereof during her life [widowhood], she keeping the same properly insured against fire and in good repair and preservation, reasonable wear and tear excepted; and after her death [or marriage], upon trust for ——; Furniture or other effects to wife for life or widowhood.

Inventory to be made.

And I direct that an inventory of the same effects and premises shall be made in duplicate as soon as may be after my death by my trustees (*a*) at the expense of my estate, and that one copy thereof shall be signed by my trustees and kept by my sd wife, and one copy signed by my sd wife and retained by my trustees: Provided always, and I declare that my trustees shall not be concerned during the lifetime [widowhood] of my sd wife to see to the insurance or preservation of the sd effects and premises, or any of them, or be liable for any loss or damage that may happen thereto from any cause whatsoever: [Provided always, and I declare that it shall be lawful for my sd wife at any time, with the consent in writing of my trustees, to sell any part of the sd furniture and effects, and to apply the proceeds in the purchase of other effects of a like nature to be held upon the same trusts].

Furniture to separate use of married woman for life, remainder as she shall appoint, in default for her, or her next of kin excluding husband.

XXV. I BEQUEATH all, &c., to, *trustees*, upon trust to permit, *legatee*, to possess and use the same during her life, but during any coverture for her separate use, independently of any husband, and of his debts, control, and engagements, and so that she shall not have power to deprive herself of the benefit thereof by anticipation, and after her death upon trust for such person or persons and for such purposes as the sd, *legatee*, shall, while discovert by deed revocable or irrevocable, or whether covert or discovert by will or codicil, appoint, and in default of and subject to any such appointment, if the sd, *legatee*, shall die discovert in trust for the sd, *legatee*, her exors, admors, and assigns, but if she shall die covert in trust for such person or persons as would have become entitled thereto under the statutes for the distribution of the personal estates of intestates at the time of her death if her husband had died immediately before her, and she had died possessed thereof and intestate, such persons, if more than

(*a*) It is assumed throughout these forms that, "trustees," is defined as including a sole trustee. If this is not done the expression, "trustees or trustee," should be used.

one, to take as tenants in common in the shares in which they would have taken under the same statutes. *Provisions as to insurance and inventory, and protection of trustees from liability, as in last form, mutatis mutandis.*

Furniture, &c. in trust for children to be divided among them on their all attaining twenty-one, or marrying.

XXVI. I BEQUEATH all my furniture, plate, plated articles, books, pictures, prints, and other household and domestic effects, to, *trustees*, their exors and admors, upon trust (so long as any child of mine shall be under the age of twenty-one years and unmarried) to permit the same, or any of them, to be used and enjoyed by my children or any of them, or by any person or persons for their, his, or her benefit, under such restrictions and in such manner as my trustees may think fit, and to cause such parts (if any) of the sd furniture and effects as may not be so used to be preserved and taken care of at the expense of my general estate, and upon further trust, so soon as all my children shall have attained the age of twenty-one years or married or died under that age, to divide such furniture and effects among such of my children as shall have attained the age of twenty-one years, or married, or their exors, admors, or assigns, as nearly as may be in equal shares, and with an absolute discretion as to the mode of effecting such division, which shall not be questioned on the ground of any alleged inequality or otherwise: PROVIDED ALWAYS and I declare, that it shall be lawful for my trustees, either immediately after my death or at any subsequent time or times, with the consent of such of my children (if any) as shall for the time being have attained the age of twenty-one years, or their respective exors or admors, to sell any part or parts of the sd furniture and effects, which may not appear likely to be of any special value to my children, or which it may be inconvenient or expensive to preserve for them, in which case the proceeds thereof shall form part of my residuary personal estate; PROVIDED ALSO, that it shall be lawful for my trustees, at any time before the aforesd period of division, to make over any portion of such furniture and effects to any child of mine who shall have attained the age of twenty-one

years or married, as part of his or her share or expectant share therein; AND I DIRECT my trustees to have inventories prepared of such parts of the sd furniture and effects as they may deliver to my children, or any of them, or to any person or persons for their respective use before the final division thereof, (except such of the same effects as, from their trifling value or perishable nature or for any other reason, it may be considered unnecessary to include in such inventories), and to cause such inventories to be signed by the persons to whom such furniture and effects shall be delivered: And I give my trustees an absolute discretion as to the insurance of the sd furniture and premises, And I declare that after causing such inventories as aforesd to be made, my trustees shall not be concerned to see to the custody or preservation of the sd furniture and premises, or be liable for any loss or damage happening thereto.

Provision for indemnity of trustees of settled furniture.

XXVII. PROVIDED ALWAYS, and I declare that my trustees shall not be bound to see to the insurance, custody, or preservation of the sd furniture, and other effects, comprised in the bequest hereinbefore contained, or to interfere in any way in relation thereto, further than to require such inventory to be made and signed as aforesd, and shall not be responsible for any omission, neglect, or default on the part of the person or persons entitled to the use or enjoyment thereof, or otherwise in relation thereto, or for any loss thereof, or damage thereto, nevertheless my trustees shall be at liberty at any time, if they shall think fit, to interfere for the protection of the sd furniture and premises.

Disposal of specific articles by reference to a separate paper.

XXVIII. PROVIDED ALWAYS, and I request that the sd —— will give and dispose of any articles which may be mentioned in any memorandum signed by me and deposited with this my will, or left among my papers at my death, according to the directions therein contained, but such memorandum shall not be deemed to have any testamentary character, and the above expression of my wishes as to the disposal of the sd articles shall not create any trust or legal obligation.

BEQUESTS OF LEASEHOLDS, &c.

Specific bequest of leaseholds.

I. I BEQUEATH my leasehold messuage, with the gardens, pleasure-grounds and lands held therewith, situate at —— [*or*, my leasehold messuage, with the outbuildings and stabling belonging thereto, situate and being No. ——, in —— Street], in the parish of ——, in the county of ——, with the appurtenances thereof (*b*), unto A., of, &c., his exors, admors, and assigns, for all the residue which shall be unexpired at my decease of the term for which the same premises are holden, [subject to the rent reserved by, and the covenants and conditions contained in the lease under which the sd premises are holden, *or*, "the sd ——, his exors, admors, and assigns, paying the rent reserved by, and performing and observing at his and their own expense, the covenants and conditions contained in the lease under which the sd premises are holden, and keeping my general estate indemnified in respect thereof"].

The same to trustees.

II. I BEQUEATH all that, &c., *as in last form*, unto, *trustees*, their exors, admors, and assigns, for all the residue, &c., and subject to the rent, &c., *as in last form*, upon trust that my trustees shall by and out of the rents and profits thereof pay the rent reserved by the sd lease, and all other necessary outgoings in respect thereof, and the expenses of [keeping the same insured and in good repair and otherwise] performing the covenants of the sd lease, and upon further trust, &c.

Bequest of leasehold house with furniture, &c.

III. I BEQUEATH unto A., of, &c., for his absolute use and benefit, all that my leasehold messuage, &c., wherein I now reside, for all my term and interest therein, together with all my furniture, fixtures, and household effects, in, about, or belonging to the same.

(*b*) If the testator has other property adjoining, say, "with the rights, easements, and appurtenances thereto belonging, or reputed to belong, or therewith held or enjoyed." See *Polden* v. *Bastard*, L. R. 1 Q. B. 156, and the cases there cited.

Bequest of leasehold house and furniture, &c., to wife for life or widowhood, with remainder over (without trustees) (*c*).

IV. I BEQUEATH unto my wife ——, during her life [widowhood], my leasehold messuage, &c., if my term therein shall so long last, together with all the furniture, fixtures, &c., *as in last form*, she, my sd wife, paying the rent, rates, taxes, and outgoings for the time being payable in respect of the sd messuage and premises, and keeping the same properly insured against fire and in good repair, and duly observing and performing all the lessee's covenants and conditions contained in the lease under which the sd leasehold premises are holden, and also keeping the sd furniture and other effects insured and in a proper state of preservation; and it is my desire that my exors or exor shall see to the insurance of the sd messuage, furniture and effects, but without being in any way responsible for any omission so to do, or for any loss or damage happening thereto from any cause whatsoever; and from and after the decease [or second marriage] of my sd wife, I bequeath the sd leasehold premises for all the then unexpired term therein, and the sd furniture and effects unto my son ——, his exors, admors, and assigns absolutely.

Bequest of leasehold ground-rent for life.

V. I BEQUEATH unto A., of, &c., during his life if my term therein shall so long last, an improved leasehold ground-rent, issuing out of certain tenements and hereditaments, situate in, &c., which I purchased of ——; and I direct that, after the decease of the sd A., the same leasehold premises shall sink into, and become part of my general residuary estate, and pass under the bequest thereof hereinafter contained.

Leaseholds to separate

VI. I BEQUEATH all, &c., to, *trustees*, their exors, admors, and assigns, upon trust that my trustees shall receive the

(*c*) For a bequest *with* trustees, say, "I bequeath to, *trustees*, their exors, admors, and assigns, my leasehold messuage, &c., together with all the furniture, &c., in trust for my sd wife during her life [widowhood], she paying, &c.," and say, "my trustees," instead of, "my exors or exor," and at the end of the clause say, "I declare that the sd leasehold premises, furniture, and effects, shall be held in trust for my son, &c."

rents and profits thereof, and after paying thereout the rent reserved by the lease under which the same premises are held, and all other necessary outgoings, if any, and the expense of [keeping the same insured against loss or damage by fire and in good repair, and otherwise] performing the covenants of the sd lease, shall pay the surplus or net rents and profits thereof to, *legatee*, the wife of ——, for her sole and separate use, independently of her present or any future husband, and of his debts, control, and engagements, or shall permit the sd, *legatee*, personally to occupy and manage the sd premises, but so nevertheless that she shall not have power to dispose of her interest in the same premises or the rents and profits thereof by way of anticipation, and so that, if and so long as the sd, *legatee*, shall personally occupy and manage the sd premises, she shall [keep the same insured and in such good repair as aforesd, and otherwise] perform the covenants of the sd lease, and pay all other necessary outgoings, if any, and so that my trustees shall not incur any liability by reason of her neglecting so to do; And after the death of the sd, *legatee*, my trustees shall stand possessed of the same leasehold premises in trust for such person or persons, &c., *as legatee may appoint, in default for her, or her next of kin, as at* p. 1234, *form* XXV.

use of married woman for life, remainder as she may appoint, in default, for her or her next of kin excluding husband. Full form.

VII. I BEQUEATH all, &c., to, *trustees*, their exors, admors, and assigns, upon trust for, *legatee*, the wife of ——, absolutely, for her separate use, independently of her present or any future husband [but so that she shall not have power to deprive herself of the benefit thereof by any sale, mortgage, or other disposition by way of anticipation]: Provided always that my trustees shall not be bound to see to the payment of the rent reserved by, or the performance of the lessee's covenants and conditions contained in the lease under which the same premises are holden.

Leaseholds in trust for married woman absolutely for her separate use.

VIII. I BEQUEATH to ——, his exors and admors, my farm, called ——, with the farm-house, farm-buildings, and land belonging thereto, as the same are now held by me, under a lease from ——, with the live and dead stock,

Bequest of leasehold farm with farming stock, &c.

growing and severed crops and produce, furniture, household goods, and effects, and consumable stores and provisions, which shall at the time of my death be in, upon, about, or belonging to the sd farm, or the sd farm-house, buildings, and premises.

BEQUESTS OF BUSINESS.

Bequest of business.

I. I BEQUEATH to —— the goodwill of my trade or business of ——, and the stock in trade, machinery, plant, and effects employed therein or belonging thereto, [including the lease of the messuage or tenement, shop, manufactory, and buildings, situate at, &c., in which the sd business is carried on, or used for the purposes thereof,] and the benefit of all contracts subsisting in respect of the sd business, and all book debts, and moneys due to me in respect thereof, or standing to the credit of my business account at my bankers at the time of my decease, the sd —— discharging and indemnifying my general estate from all debts and liabilities due or subsisting in respect of the sd business at my decease, and, if required by my exors, entering into a bond or covenant at the expense of my general estate in that behalf, [*add, if desired, appointment of legatee special executor in respect of,* "the sd business and premises hereinbefore bequeathed to him," *see below,* "APPOINTMENT OF EXECUTORS."]

Bequest of share in partnership to a son under a power in the articles of partnership.

II. IN EXERCISE of a power contained in the articles of partnership of the firm of ——, in which I am a partner, dated, &c., or any other power which may at my decease enable me in this behalf, I hereby introduce my son —— as a partner into the sd firm as from my decease during the remainder of the term of the sd partnership, subject to the provisions of the sd articles of partnership, or any other agreement of partnership, which may be subsisting at my decease; And I

do hereby bequeath unto my sd son my share in the capital, stock in trade, assets, goodwill, and profits of the sd firm, he indemnifying my general estate from all debts and liabilities of the sd firm, [and paying to my exors for the general purposes of this my will my share of the profits of the sd partnership business and interest on my capital therein up to the day of my death, as and when the same shall be received by him] : [*Appointment of son as special exor in respect of*, "the share and premises hereinbefore bequeathed to him," *see below*, "APPOINTMENT OF EXECUTORS."]

Power to wind up partnership business.

III. I AUTHORISE my trustees (*d*) to concur in winding up the business of ——, now carried on by the firm of ——, in which I am a partner, or any business in which I may be a partner at the time of my death, and for that purpose to make, or concur in making, arrangements and compromises with debtors or creditors or persons under contracts with the firm, and also to dispose of my share in any such business by valuation, or otherwise, and generally on such terms as they shall think fit, with power to postpone such winding up or disposition [until one or more of my sons shall attain the age of twenty-one years, or] during such period as they shall think proper, and with full power to settle any accounts, and to accept any statements of account, whether with or without the production of any vouchers or other evidence, and to accept, pay, or allow any agreed or estimated sum in satisfaction of all, or any, of my rights or liabilities, and to accept, or concur in accepting, payment for my share, or for the whole of any such business, as the case may be, by such instalments, upon such terms, and in such manner, as they shall think fit; And with power to allow the whole or any part of my share in the capital of any such business to remain as a loan to the person or persons for the time being carrying on the same business, [and to lend any further sum or sums of money out of my estate, not exceeding in the whole £——,

(*d*) Some of the powers under this head may be more properly given to the executors. In case of doubt this may be provided for by inserting the clause near the end of the next form.

to them or him,] for such time, under such conditions, upon such security whether personal or otherwise, and at such rate of interest whether fixed or varying with the profits, as my trustees shall think fit, without being responsible for any loss which may be occasioned thereby; And generally to act in relation to any such business, with the same powers, and discretions, as if they were absolute owners thereof, without liability for any loss that may be occasioned thereby.

Power to continue business forming part of residuary estate alone or in partnership. Full form.

IV. PROVIDED ALWAYS, and I declare that, notwithstanding any of the trusts and provisions hereinbefore contained, it shall be lawful for my trustees, in case they in their absolute discretion shall think fit so to do, to continue for such period as they shall think desirable my business of ——, either alone or in partnership with any person or persons, who may be in partnership with me at my decease, or may be subsequently admitted into partnership by my trustees under the provisions hereinafter contained, and also at any time to enter into any new arrangement or agreement with any such partner or partners, either by way of substitution for, or modification of, any then subsisting arrangement or agreement in relation to such business or otherwise, and if deemed expedient to alter or vary the nature or extent of the sd business, and to retain or employ in such business such part of my residuary estate (whether in excess of my capital or share of capital engaged therein at my decease or not) as my trustees may from time to time think proper, and at any time to admit, or concur in admitting, as a partner or partners into such business any [son or sons of mine, or any other] person or persons, upon such terms, and with or without the payment of a premium, as my trustees shall think proper: AND I FURTHER DECLARE that my trustees may leave the entire management of the sd business to any partner or partners, so as to be free from the necessity of attending thereto, further than requiring such partner or partners to render once or oftener in every year an account thereof, and without being obliged to examine into the accu-

racy of such accounts, and may also, in case they shall think proper, leave the entire management of such business, or my share therein, to any manager or managers, at such salary or percentage on the profits of the sd business or my share therein, and with such powers and authorities as may be deemed proper, and in case any one or more of my trustees shall be unwilling to engage in or to become a partner or partners in the sd business, on account of the responsibility which he or they may incur thereby, such trustee or trustees may allow his or their co-trustee or co-trustees to engage in or to become a partner or partners in such business, and alone to act in the trusts of this my will so far as relates to the carrying on of such business: And I further empower my trustees at any time to sell or dispose of the whole or any part of the sd business, or my share or interest therein to any [of my sons, or to any other] person or persons, for such price or sum to be ascertained by valuation or otherwise, and upon such terms as they may think fit: And I further declare that, if and when my trustees shall wind up the sd business or shall dispose thereof, or of my interest therein, they may make such arrangements in relation thereto, as they may think desirable, with full power to settle accounts, and to accept any statements of account with or without production of vouchers or evidence, and to leave to any agent, partner, or other person or persons the collecting of any outstanding debts, and to give time to any partner or partners, or person or persons purchasing or succeeding to the sd business for payment of the capital or other sums owing or belonging, or payable to my estate in respect thereof, or to lend any sum [not exceeding £——] out of my residuary personal estate, and from time to time to continue the loan thereof to him or them, either alone or jointly with his or their partner or partners for the time being, during such period as my trustees shall think proper, and either with or without taking security for the same in addition to the bond or covenant of such partner or partners, or person or persons as aforesd, upon the footing of receiving in respect

thereof either a fixed rate of interest, or a rate varying with or dependent upon the profits of the sd business, and generally to exercise the same powers and discretions in relation to the sd business and premises, as if acting on their own account, and so as to be free from all responsibility and to be fully indemnified by my estate in respect of any loss arising in relation thereto: And I declare that all or any of the powers hereby given to my trustees in relation to the sd business may, in case and so far as circumstances may require, be exercised by my exors, and all such powers may be exercised, notwithstanding that any of my trustees or exors may be interested as a partner or partners in the sd business, or may be beneficially interested under this my will: And I further declare that all profits or interest accruing to my estate from the carrying on of the sd business, or from the employment of my capital or any part of my estate therein on the footing of a loan or otherwise, shall be treated and applied as income of my residuary estate.

The same. Short form.

v. I authorise my trustees to carry on, [or join in carrying on], the trade or business of ——, now carried on by me [the firm of ——, in which I am a partner], during such period as they shall think fit, and for that purpose to retain and employ therein the capital, [or my share of the capital,] which shall at my death be employed therein, and such additional capital as they shall think fit to advance from time to time out of my residuary estate, with power to employ [or concur in employing], at such salary as they shall think fit, any manager of the sd business, and generally to act [or concur in acting] in all matters relating to the sd business, as if they were beneficially entitled thereto, [or to my share and interest therein;] And also power to delegate all or any of the powers vested in them in relation to the sd business to any persons or person whom they may think fit: And my trustees shall be free from all responsibility, and be fully indemnified out of my estate in respect of any loss arising in relation to the sd business.

Power to leave capital in business on loan. A full form.

VI. I AUTHORISE my trustees, if they shall in their discretion think fit, to permit the whole or any part of the amount, which on taking the partnership accounts shall appear to be due to my estate as and for my share and interest in any partnership business in which I may be engaged at my decease, to remain in the sd business on the footing of a loan, for such period as they may think proper, upon the terms of receiving interest for the same, either at a fixed rate or at a rate varying with or dependent on the profits of the business, and upon such other terms in all respects as may be deemed proper or expedient; and from time to time to renew or continue such loan wholly or partially, and to agree to any alteration or modification of the terms thereof, so that the repayment of the sd capital, with the interest thereon as agreed, shall be secured by the bond or covenant of the person or persons to whom the loan shall be made, either with or without any other security for the same, as my trustees shall think fit: And my sd capital or any part thereof may be so allowed to remain in the sd business, notwithstanding that my trustees for the time being, or any or either of them may be engaged or concerned therein, and notwithstanding any change from time to time in the persons carrying on the same or in the character of the business, and my trustees shall not be in anywise responsible for any loss thereby occasioned.

Power or direction to exors to exercise option of becoming sleeping partners.

VII. I AUTHORISE my exors to exercise at their discretion [I DIRECT my exors to exercise] the option given to them by the articles dated, &c., which now regulate my partnership in the firm of ——, or any option which may be available in that behalf at my decease, of becoming sleeping partners in such firm: And I declare that [in case my exors shall elect to become such sleeping partners] my share from time to time in the capital of the sd firm, shall be considered as forming part of the capital of my residuary estate, and that my share from time to time in the profits thereof and interest on capital, as from the last day immediately preceding my death appointed by the sd articles of

partnership for taking the annual general account of the sd partnership business, shall be considered and applied as income of my residuary estate.

Power to exors to make arrangements for admission of testator's sons into his business.

VIII. I AUTHORISE my exors [and trustees] to make any arrangements with the partners or partner for the time being of the firm of ——, in which I am now a partner, for the admission into the sd firm of any son or sons of mine as a partner or partners, for the whole or any part of my share in the sd business; And on the admission of such son or sons either to sell to him or them my share in the sd business on such terms as may be reasonable, or to allot such share to him or them in satisfaction, wholly or in part, of his or their share or shares in my residuary estate; and to leave the whole or any part of the purchase money to be paid by any such son as a loan to him, repayable with interest at the rate of £5 per cent. per annum by such instalments, at such times, and in such manner as may be agreed upon, but so that the repayment of such instalments and interest shall be secured by the bond or covenant of such son.

Sons to have option in succession of succeeding to testator's business, or to a share in a partnership.

IX. I DECLARE that my sons shall have the option in succession according to seniority, [on attaining the age of —— years,] of succeeding to my [share in the] business [of the firm] of ——, [in which I am now a partner,] such option to be declared in writing by each son within such time as my exors shall appoint in that behalf, by a notice given to such respective sons in succession; And I declare that immediately on any son of mine electing to succeed to such business, [share, my exors shall make all necessary arrangements for introducing him into the sd firm for the whole of my share therein: And I declare that from and after the admission of such son into the sd firm] the whole of [my share in] the sd business and the capital thereof, shall belong to him, and he shall be debited with the value thereof (estimated in such manner as my exors shall think fit) in the division of my estate, and in case such value shall exceed the total amount of the share of such son in my estate, he shall refund such

excess to my estate by instalments or otherwise, in such manner as my exors shall determine: Provided always that the profits of the sd business until any son of mine shall elect to succeed thereto [share of profits coming to my estate until the admission of such son] shall be treated as income of my residuary estate.

x. I AUTHORISE my exors [and trustees] in their absolute discretion to make any arrangements which may be feasible, and which they may think fit, for securing the introduction of any infant son or sons of mine, when and as he or they shall respectively attain the age of twenty-one years, or within a reasonable time afterwards, as a partner or partners into the sd business, [firm, for part of the share of my son or sons who shall be admitted under such arrangement as aforesd,] upon such terms as may be agreed upon.

Power to exors to reserve right of introducing testator's younger son or sons on attaining twenty-one into business. (*a*)

GENERAL LEGACIES.

i. I BEQUEATH the sum of £—— to A. of, &c. [free from legacy duty]. Pecuniary legacy.

ii. I BEQUEATH the following legacies [free from legacy duty] namely, the sum of £—— to A. of, &c., the sum of £—— to B. of, &c., and the sum of £—— to C. of, &c. The same. Several.

iii. I BEQUEATH to A. of, &c., the sum of £——, to be raised by the sale of a sufficient part of the £3 per Cent. Consolidated Bank Annuities, now standing in my name, as the primary fund for the payment thereof, and in case I shall not be possessed of such stock, or a sufficient amount thereof at my decease, I direct that the sd legacy, or so much thereof as the sd stock shall be insufficient to pay, shall be paid out of my general personal estate. Demonstrative legacy.

iv. I BEQUEATH to, *trustees*, their exors, admors, and assigns, the sum of £——, upon the trusts [and with and Legacy in trust.

(*a*) This form may be added to form VIII. or IX.

subject to the powers and provisions] hereinafter declared and contained concerning the same.

Stock legacy in trust.

V. I BEQUEATH to, *trustees*, their exors, admors, and assigns, the sum of £——, £3 per Cent. Consolidated Bank Annuities, to be appropriated or purchased in their names, out of my general personal estate, and to be held upon the trusts [and with and subject to the powers and provisions] hereinafter declared and contained concerning the same.

Immediate legacy to wife.

VI. I BEQUEATH to my dear wife C. the sum of £——, to be paid to her within one calendar month [*or*, as soon as may be] after my decease for her immediate requirements.

Legacy to a person or to his children by substitution.

VII. I BEQUEATH to A. of, &c., the sum of £——; but in case he shall die in my lifetime, then I give the same to his children or child (if any), who shall be living at my decease, and shall attain the age of twenty-one years, or being daughters or a daughter, shall marry, if more than one in equal shares.

The same. Several.

VIII. I BEQUEATH the following legacies, namely, the sum of £—— to A. of, &c., the sum of £—— to B. of, &c., and the sum of, £—— to C. of &c.; but in case any of the sd legatees shall die in my lifetime, then I give his [or her] legacy to his [or her] child or children (if any) who shall, &c., *as in preceding form.*

Legacy with provision against lapse in case of the legatee dying leaving issue.

IX. I BEQUEATH the sum of £—— to A. of, &c., in case he shall survive me or die in my lifetime leaving issue surviving me, and so that in the latter case such legacy shall vest in his representatives as part of his personal estate in the same manner as if he had survived me and died immediately after me (*a*).

The same to several.

X. I BEQUEATH the following legacies, namely, £—— to A., of, &c. £—— to B. of, &c., and £—— to C. of, &c.,

(*a*) A legacy saved from lapse in this way would devolve, as part of the legatee's estate, in the same manner as a legacy to a descendant of the testator saved from lapse by the Wills Act, s. 33. As to the importance of the last part of the clause, where the legatee is not a descendant of the testator, see *In re Coleman*, 4 Ch. D. 165.

in case he [or she] shall respectively survive me, or die in my lifetime leaving issue, &c., *as in preceding form, saying, if necessary,* "his or her," &c.

Legacy to female for her separate use.

XI. I BEQUEATH the sum of £—— [free of legacy duty], to B., the wife of C. of, &c., for her separate use, independently of her present or any future husband [*or, if a spinster, say,* "independently of any husband she may marry"], and so that her receipt shall be a sufficient discharge for the same.

General direction that legacies to females shall be for their separate use.

XII. AND I DECLARE that all legacies hereinbefore bequeathed to females shall be for their respective separate use, independently of their respective present or future husbands (if any), and so that their respective receipts, whether they shall be covert or sole, shall be sufficient discharges for the same.

Legacy to vest at twenty-one.

XIII. I BEQUEATH the sum of £—— to A. of, &c., in case and when he shall attain the age of twenty-one years.

The same to a female at twenty-one or marriage.

XIV. I BEQUEATH the sum of £—— to A. of, &c., in case and when she shall attain the age of twenty-one years, or marry under that age, for her separate use, independently of any husband, and her receipt [whether she shall be of full age or not (*b*)], shall be a sufficient discharge for the same.

Legacies with interest to two persons at twenty-one, with survivorship.

XV. I BEQUEATH unto A. and B., the sons of ——, the sum of £—— each [free of legacy duty], to be paid to them respectively if and when they shall respectively attain the age of twenty-one years, with interest, at the rate of £—— per cent. per annum from my decease; and in case either of them shall die in my lifetime, or before he shall attain that age, I bequeath the legacy hereinbefore given to him so dying, with interest as aforesd, to the survivor of them if and when he shall attain the age of twenty-one years; and in case both of them shall die in my lifetime, or before

(*b*) It is doubtful whether the words bracketed have any effect. See on this point, *Re Cardross' Sett.*, W. N., 1878, p. 58.

attaining that age, the sd legacies shall sink into my residuary estate (*c*).

Legacy to child at twenty-one, with interim maintenance.

XVI. I BEQUEATH the sum of £—— to my son ——, if he shall attain the age of twenty-one years, with interest (*d*), in the meantime to be computed from my decease at the rate of £4 per cent. per annum to be paid to his guardians or guardian for his maintenance and education; and if the sd —— shall die under the age of twenty-one years, then the sd legacy shall sink into my residuary estate (*c*).

Legacy to children at twenty-one, with interim maintenance.

XVII. I BEQUEATH the sum of £—— unto and equally between such of my children, as being sons attain the age of twenty-one years, or being daughters attain that age or marry; and I direct that such legacy shall carry interest at the rate of £4 per cent. per annum from my decease, to be applied by my trustees at discretion in or towards their respective maintenance or education during minority, and in the case of daughters' spinsterhood, with power either themselves so to apply the same, or to pay the same to the guardians or guardian of such respective children without seeing to the application thereof (*e*).

General direction as to investment, &c., of infants' legacies.

XVIII. AND IN CASE any of such legatees shall at the time when his or her legacy would otherwise become payable, be a minor [and in the case of a female, a spinster], I direct that his or her legacy shall be invested by my

(*c*) A gift to a person at twenty-one, or if he shall attain twenty-one, where the interim interest is given to him or some other person to be applied for his benefit, vests at the testator's death. Hence the necessity for the direction as to the legacy sinking into the residuary estate. Hawkins on Wills, p. 227, *Hanson* v. *Graham*. 6 Ves. 239.

(*d*) A gift to a child of the testator, or other person to whom he stands *in loco parentis*, would, unless an intention to the contrary were shown, carry interest for maintenance during minority without any express direction (see 2 Williams, Executors, 7th ed., p. 1428). If in that case maintenance is not intended, it should be expressly excluded by adding, "but without interest in the meantime."

(*e*) A gift to such children as attain twenty-one as a class, with interim maintenance, vests only in those who actually attain twenty-one, and not in the children living at the testator's death, as it would if the gift had been nominatim. Hawkins on Wills, p. 228.

trustees in their names in the public stocks or funds, or any other investments authorised by law in the case of trust funds [*or*, in any of the investments hereby authorised in the case of my residuary estate], with power to vary such investments at discretion, and that the whole or any part of the income thereof shall, during the minority [and, in the case of a female, spinsterhood] of such legatee, be applied by my trustees at their discretion for or towards the maintenance, education, or benefit of such legatee, either directly, or by paying the same to his or her guardians or guardian, and that any surplus income shall be accumulated by the investment thereof, and of the resulting income thereof, as an addition to the capital of such legacy, but with power to my trustees to apply any such accumulations in any subsequent year or years for the maintenance, education, or benefit of the legatee [*add power of advancement, if desired, see* "MAINTENANCE, &c."; *and if the legacies are contingent, add,* "Provided always that in case any of the sd legatees shall die before attaining a vested interest in his or her legacy, the same shall sink into my residuary estate."]

Legacies to exors and trustees.

XIX. I BEQUEATH to each of them the sd A. and B. [to each of my exors [and trustees], other than the sd A.], the sum of £——, in case they shall respectively prove my will [and accept the trusts thereof.]

Power to trustees to charge fees.

XX. I REQUEST my trustees for the time being to hold a meeting once in every half year to examine and adjust the accounts of my estate, and I authorise each of them to retain and pay himself the sum of £—— for the trouble and expense of attending each of such meetings.

Legacy to a servant.

XXI. I BEQUEATH to my servant A. the sum of £—— [free of legacy duty], *or*, "nineteen guineas," in addition to any moneys owing to him from me for wages or otherwise at my death [in recognition of his honest and faithful services, *or*, "provided he shall be in my service at the time of my decease"].

Legacies

XXII. I BEQUEATH to each of my domestic [upper] servants

to servants or clerks.

[clerks], who shall be in my service [employed in my business] at the time of my decease, the sum of £—— [the amount of one year's wages, *or*, salary], [free of legacy duty], in addition to any moneys which may be owing by me to them respectively at my decease.

Legacies to servants at discretion of exors.

XXIII. I BEQUEATH to my exors the sum of £—— [free of legacy duty], to be divided among, or applied for the benefit of, such of my servants who shall be living with me at the time of my decease, and in such proportions and manner as my exors shall in their absolute discretion think fit.

Legacy to a charity(*g.*)

XXIV. I BEQUEATH to the —— Institution the sum of £—— [free of legacy duty], to be paid [together with the duty thereon] out of such part of my estate (*h*) as can by law be bequeathed for charitable purposes, and to be applicable for the general purposes of such institution; and I declare that the receipt of the treasurer for the time being of such institution shall be a sufficient discharge for the same.

Several charitable legacies.

XXV. I BEQUEATH the following charitable legacies [free of legacy duty], and I direct that the same [together with the duty thereon] shall be paid out of such part of my estate (*h*) as may lawfully be disposed of for charitable purposes, that is to say, unto the —— Society the sum of £——, unto the —— Institution the sum of £——, &c., and I declare that the receipt of the treasurer for the time being of the same respective societies and institutions shall be a sufficient discharge for the same respective legacies.

Legacies to charities to be selected by exors.

XXVI. I BEQUEATH the sum of £—— [free of legacy duty], to be paid [together with the duty thereon] out of such part of my estate as may lawfully be disposed of for charit-

(*g*) As to legacies to charities, and especially as to the operation of the Mortmain Act, 9 Geo. ii. c. 36, see Jarman on Wills, vol. i., pp. 194, *et seq.* 3rd ed.

(*h*) This is not confined to the *personal* estate, as the testator may have *real* estate *abroad*, which may be lawfully devoted to charity.

able purposes unto or for such charitable institution or institutions or object or objects (*a*) in England as my acting exors or exor may in their or his absolute discretion select, and to be paid to or for such institutions or objects, if more than one, in such proportions as my sd exors or exor may think proper.

Direction that assets shall be marshalled in favour of charities.

XXVII. AND in order to give full effect to the bequests hereinbefore contained for charitable purposes, I direct that my funeral and testamentary expenses and debts and the legacies (other than charitable legacies) bequeathed by this my will or any codicil hereto, and the legacy duty on any such legacies bequeathed free of duty shall be paid out of such part of my personal estate as may not lawfully be bequeathed for charitable purposes as the primary fund, and in case only of the same being insufficient for payment thereof then out of such part of my personal estate as may be bequeathed for charitable purposes as the ultimate fund.

The same. Another form.

XXVIII. AND I direct that, if necessary, my assets shall be marshalled so as to leave such part of my estate as may lawfully be bequeathed for charitable purposes, or a sufficient part thereof applicable to the payment of the charitable legacies bequeathed by this my will or any codicil hereto, and the legacy duty on any such legacies bequeathed free of duty.

Legacy to creditor.

XXIX. I BEQUEATH the sum of £—— to —— in addition to any moneys which may be owing to him from me at the time of my death.

Direction that legacies are not to be in satisfaction of debts.

XXX. I DECLARE that any legacy hereby bequeathed to any person to whom I may be indebted, or to the husband or wife of any such person, shall be in addition to, and not in satisfaction of, the moneys which may be so owing by me to him or her, or to his or her wife or husband.

(*a*) A bequest at the discretion of exors to charitable purposes, or other indefinite purposes not charitable (such as benevolent), is void if there is no apportionment of the bequest. *Re Jarman's Estate*, 8 Ch. D. 584, 1 Jarman on Wills, 196, 3rd edit.

Legacy to illegitimate child.

XXXI. I BEQUEATH to A., now residing with —— [the natural, *or*, "reputed," son of ——] (*b*) the sum of £——.

Legacy in satisfaction of covenant in daughter's settlement.

XXXII. I BEQUEATH the sum of £——, with interest after the rate of £4 per cent. per annum from the day of my death to the trustees or trustee of an indre of settlement dated, &c., executed on the marriage of my daughter ——, in satisfaction of a covenant [bond] entered into by me in such settlement [on such marriage] for payment of such principal sum and interest to such trustees or trustee.

Legacy on trusts of daughter's settlement.

XXXIII. I BEQUEATH the sum of £—— to the persons or person who shall at my decease be the trustees or trustee of an indre of settlement dated, &c. [and expressed to be made, &c.] made on the marriage of my daughter ——, to be held upon the trusts, and with and subject to the powers and provisions by and in such settlement declared and contained concerning the moneys to arise from a sale under the trusts therein contained of the sum of £—— Bank Annuities thereby settled, *or*, "concerning the property thereby settled or agreed to be settled by or on the part of my sd daughter," *or*, "concerning the after-acquired property of my sd daughter thereby agreed to be settled," or such of the same trusts, powers, and provisions as may be then subsisting, and so that such trusts, powers, and provisions shall take effect in relation to the sd sum of £—— in the same manner in all respects, as far as the case will admit, as if such sum had formed part of the moneys to arise from such sale, *or*, "of the property originally settled or agreed to be settled by or on the part of my sd daughter," *or*, "of such after-acquired property of my sd daughter."

Legacy to be repaid on succeeding to a title.

XXXIV. I BEQUEATH the sum of £—— to ——, upon condition that if he shall (*c*) succeed to the earldom of ——,

(*b*) All that is necessary in this case is, that the legatee should be sufficiently identified.

(*c*) Other forms of condition are, "if he shall become a field officer in her Majesty's army": "if he shall be instituted to

or, "to the baronetcy now vested in ——," he shall repay the same to my exors, to the intent that the same shall fall into my residuary estate.

General direction that legacies are to be free of duty.

XXXV. I DECLARE that all the pecuniary legacies hereinbefore bequeathed shall be free from legacy duty, which shall be paid out of my general personal estate, [*or if the legacies are given out of a particular fund*, "out of the sd," *fund*.]

Direction to pay legacies in three months.

XXXVI. I DIRECT that the legacies hereinbefore bequeathed to the sd A. and B. shall be paid within three calendar months after my decease.

Declaration as to priority of legacies.

XXXVII. I DECLARE that the legacy of £—— hereby bequeathed to the sd —— shall be payable in priority to any other pecuniary legacy bequeathed by this my will [or any codicil hereto.]

Another form.

XXXVIII. I DIRECT that the several pecuniary legacies hereinbefore bequeathed to the sd, &c., shall have priority in the order in which the same are hereinbefore bequeathed, but so that legacies given to a class shall have no priority as between themselves.

Direction that certain legacies shall abate in case of deficiency.

XXXIX. AND I DECLARE that if the moneys to arise from the sale and conversion hereby directed or otherwise forming part of my estate shall not be sufficient to pay my funeral and testamentary expenses and debts, and all the legacies hereby bequeathed, then the legacies of £—— and £—— hereby given to the sd —— and —— shall abate proportionately.

Gift of legacies charged on specific real estate.

XL. I BEQUEATH the following legacies charged upon, and raiseable and payable out of the hereditaments situate, &c., hereinafter devised to —— (that is to say) the sum of £——, to ——, &c.

Charge of

XLI. I HEREBY CHARGE all the legacies hereinbefore be-

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an ecclesiastical benefice, the net annual value of which shall exceed the sum of £——": "if he shall not within —— years from my decease take the degree of Bachelor of Arts at the University of ——."

legacies on real estate, with directions for raising them.

queathed on my real estate, [situate, &c., hereinafter devised to ——,] in case of the deficiency of my personal estate, with power for my trustees to raise the amount of such deficiency, together with the costs of raising the same, by sale or mortgage of such real estate, or any part or parts thereof, and so that any such mortgage may be in fee simple, or for any term of years, and with or without a power of sale, and to execute and do such assurances and things as may be necessary or proper for effectuating any such sale or mortgage: and I declare that no purchaser or mortgagee shall be bound to ascertain whether such deficiency of my personal estate exists, or whether more money than is required is raised, or to see to the application of the money raised, and that the declaration in writing of my trustees that no further sum can be required to be raised under the present power shall be conclusive in favour of any purchaser, mortgagee, lessee, or other person, acquiring any interest in the sd real estate, or any part thereof.

ANNUITIES.

Bequest of annuity.

I. I BEQUEATH to A. of, &c., during his life, an annuity of £—— [free from legacy duty], commencing from my death, and to be payable half yearly, *or*, "quarterly," on the —— day of ——, &c., *or*, "on the usual quarter days," the first payment or an apportioned part thereof from my decease to be made on such of the sd days as shall happen next after my death, [*or*, to be payable half yearly, *or*, "quarterly," *or*, "weekly," and the first payment thereof to be made at the expiration of six, *or*, "three," calendar months from, *or*, *if weekly*, "as soon as may be after" my death].

Several annuities.

II. I BEQUEATH the following annuities, that is to say, to A. of, &c., an annuity of £—— during his life, to B. of

&c., an annuity of £—— during his life, &c.; and I declare that such respective annuities shall [be free from legacy duty, and shall] commence from my decease, and be payable, &c., *as in form* 1.

To separate use of woman.

III. I BEQUEATH to A., the wife of B. of, &c., during her life, an annuity of, &c., *as in form* 1., for her separate use, independently of her present or any future husband [*if the legatee is a spinster say*, independently of any husband she may marry], [and without power of anticipation].

General declaration that annuities given to females shall be for their separate use.

IV. I DECLARE that all annuities hereinbefore bequeathed to females shall be for their respective separate use independently of any husband [and without power of anticipation], and their respective receipts [alone] during coverture shall be sufficient discharges for the same.

Bequest of annuity to two persons during their joint lives and life of survivor.

V. I BEQUEATH to A. of, &c., and B. of, &c., and the survivor of them, an annuity of £—— during their joint lives, and the life of the survivor [free from legacy duty], commencing from my death, &c., *as in form* 1.

Proviso for cesser of annuity on alienation. Variation where it is to be afterwards applied at discretion of trustees for the benefit of the annuitant and his family.

VI. PROVIDED ALWAYS and I declare that if the sd A., *annuitant*, shall at the time of my death be, or afterwards become, bankrupt, or shall assign, or charge, or attempt to assign, or charge his sd annuity, or if any other event shall happen whereby, if such annuity belonged to him absolutely, he would be deprived of the personal enjoyment thereof, then such annuity shall cease as if he were dead, [*or*, shall cease to be payable to him, and shall thenceforth during the remainder of his life be payable to, *trustees*, their exors and admors, in trust, that my trustees shall thereafter during such period or periods either continuous or discontinuous, as they shall in their absolute discretion think fit, pay all or any part of such annuity, or apply the same for the maintenance and personal support or benefit of the sd A. and his wife, if any, and children or child, and more remote issue for the time being in existence, whether minors or adults, or any of such persons to the exclusion of the others or other of them; and so much of the sd annuity as shall not be applied or disposed of by my

trustees under the discretionary trust or power lastly hereinbefore contained, shall sink into and be applied as part of the income of my residuary estate, *or*, "the trust premises out of which the sd annuity is payable"].

General proviso for cesser of annuities on alienation. With variation as in last form.

VII. PROVIDED ALWAYS, and I declare that if any of them, the sd, *annuitants*, [*or*, the respective persons to whom annuities are hereinbefore bequeathed], shall at the time of my death be, or afterwards become, bankrupt, or shall assign, or charge, or attempt to assign, or charge his or her respective annuity, or if any other event shall happen whereby, if such annuity belonged to him or her absolutely, he or she would be deprived of the personal enjoyment thereof, then such annuity shall cease as if he or she were dead, [*or*, shall cease to be payable to him or her, and shall thenceforth during the remainder of his or her life be payable to, *trustees*, their exors and admors, in trust that my trustees shall thereafter during such period or periods either continuous or discontinuous, as they shall in their absolute discretion think fit, pay all or any part of such annuity, or apply the same for the maintenance and personal support or benefit of the annuitant who shall have incurred such forfeiture, and his wife, if any, &c., *continue as in preceding form.*]

Power to raise and pay annual sums for benefit of a spendthrift.

VIII. I HEREBY authorize my trustees, if in their uncontrolled discretion they shall think fit, to raise out of the income of my residuary estate in every year, commencing from my death, during the life of —— of, &c., or during any shorter period or periods, either continuous or discontinuous, any sum or sums of money not exceeding in the whole £—— in any one year [free of legacy duty] and to pay the same by quarterly, monthly, or weekly payments to the sd —— or to apply the same for his maintenance, support, or benefit, at the absolute discretion of my trustees, unless and until he shall become bankrupt, or any other event shall happen, whereby if the same belonged absolutely to him, he would be deprived of the personal enjoyment thereof, and in case of his bankruptcy or the happening of any such other event my trustees shall thenceforth, in their uncon-

trolled discretion, pay, or apply every sum so raised to or for the benefit of the sd —— and his wife and child or children, and remoter issue, for the time being, if any, and whether minors or adults, or any of such persons, to the exclusion of the others or other of them, as my trustees shall think fit; And I declare that if any action or proceeding shall be instituted for the purpose of administering my estate, the power lastly hereinbefore contained shall be exercisable by my trustees without being subject to the control of the Court.

Trust to pay annuities out of residue after wife's death.

IX. And shall after the death of my sd wife, out of the income of the sd trust premises, pay an annuity of £—— to —— during his life, and an annuity of £—— to —— during her life, such respective annuities to commence from the death of my sd wife, and to be payable half-yearly, *or*, "quarterly," on the —— day of ——, &c., *or*, "on the usual quarter days," and the first payment thereof [or an apportioned part thereof from the death of my sd wife] to be made on such of the sd days as shall happen next after her death [*or*, at the expiration of six, *or*, "three," calendar months from the death of my sd wife,] [*for a female, add*, and the annuity hereby bequeathed to the sd ——, to be for her separate use, &c., *form* III., *and if annuities are to be inalienable, add form* VII. *above, mutatis mutandis.*]

Power or direction to appropriate fund to answer annuities.

X. I authorise, *or*, "direct," my trustees to appropriate a sufficient part of [my residuary estate] for answering by the annual income thereof the several annuities hereinbefore bequeathed, or such of them as shall for the time being be payable [with power in case of the annual income at any time proving insufficient, to resort to the capital of the appropriated fund for the payment of such annuities] [*or*, and I declare that in case the annual income of the appropriated fund shall at the time of appropriation be sufficient to satisfy the sd annuities, such appropriation shall be a complete satisfaction of the trust to provide for such annuities, and that in case the income of the appropriated fund shall at any time prove insufficient for payment of the

sd annuities in full, they shall abate porportionately]; And I declare that as and when any of the sd annuities shall cease, a corresponding part of the appropriated fund shall sink into my residuary estate, *or*, "shall revert to and become subject to the trusts hereby declared concerning the sd trust premises out of which the same shall have been appropriated as aforesd."

Power to purchase annuities.

XI. I AUTHORISE my trustees at any time or times, if and when they shall consider it convenient for the administration, winding-up, or distribution of my estate, or for any other reason, to purchase annuities in the names of the several annuitants, or (if the case shall so require) in the names of my trustees, from Government or any public company [or any private person or persons, but so that any annuity so purchased from a private person or persons shall be secured on real or leasehold estate], for the purpose of answering or satisfying the respective annuities hereinbefore bequeathed, or any of them; And I declare that any annuity so purchased in the names of my trustees shall be paid or applied by them to the person or persons for the purposes, and in the manner to and for and in which, the annuity in respect of which the same was purchased, is hereinbefore directed to be paid or applied.

Direction to purchase an annuity. Variation where it is to be inalienable

XII. I DIRECT my trustees to purchase in their names from Government or any public company an annuity of £—— [free from legacy duty] for the life of, *annuitant*, to commence from my death, and to be payable half-yearly [quarterly], and to pay the same when purchased, and in the meantime in lieu thereof to pay a like annuity out of the income of my residuary estate, to the sd, *annuitant*, [but so that he shall not be allowed to have the value of such annuity in lieu thereof, and so that in case of his becoming bankrupt, or alienating, or charging the sd annuity, or attempting so to do, or the happening of any other event whereby if the sd annuity belonged absolutely to him he would be deprived of the personal enjoyment thereof, the sd annuity, whether the same shall have been purchased or not, shall cease to

be payable to him, and shall sink into and form part of the income of my residuary estate (*c*).]

Bequest of annuity charged on real or leasehold property.

XIII. I BEQUEATH to A. of, &c., during his life, an annuity or rent-charge of £—— [free from legacy duty], commencing from my death, and to be payable, &c., *as in form* I., and [together with the legacy duty thereon] to be charged upon, and issuing and payable out of my freehold *or*, "leasehold," messuages, lands, &c., hereinafter devised [bequeathed] to D. of, &c., and subject and charged as aforesd, I DEVISE, &c.

Charge of several annuities on real or leasehold property, with powers of distress and entry. (*d*)

XIV. AND I declare that the sd annuities hereinbefore bequeathed to the sd A., B., and C. [and the legacy duty on such of them as are bequeathed free of duty], shall be charged upon, and issuing and payable out of all my real and leasehold estates [*or*, the freehold, copyhold and leasehold messuages, lands, and hereditaments, situate, &c., hereinafter devised and bequeathed to D., of, &c.], [in aid of, and not in exoneration of my general personal estate, which shall be the primary fund for the payment thereof]; and I empower the sd A., B., and C., respectively, [and their respective assigns (*e*)], by distress and entry upon, and perception of the rents and profits of the hereditaments so charged as aforesd with the sd respective annuities, or any part thereof, to recover payment of the same when in arrear for twenty-one days, and the sd annuitants [and their assigns (*e*)] shall respectively have all the powers and remedies for recovering the sd annuities [and the legacy duty on such of them as are bequeathed free of duty] which landlords have for recovering arrears of rent; and subject

(*c*) It should be remembered that a direction to purchase an annuity would entitle the annuitant to take the value in lieu of it, *Ford* v. *Batley*, 17 Beav. 303, notwithstanding an express direction to the contrary, *Stokes* v. *Cheek*, 28 Beav. 620; but not if it is to cease on alienation, &c., *Hatton* v. *May*, 3 Ch. D. 148; but see *Hunt Foulston* v. *Furber*, 3 Ch. D. 285.

(*d*) For a full form of powers of distress and entry, see p. 1149, *mutatis mutandis*.

(*e*) The words bracketed will, of course, be omitted if the annuities are to be inalienable.

to the payment of the sd respective annuities [and legacy duty] so charged as aforesd, and to the powers and remedies hereinbefore given for the recovery thereof, I DEVISE, &c.

Power to continue allowances paid by testator.

XV. PROVIDED ALWAYS and I authorise my trustees in their uncontrolled discretion to continue any annuities or compassionate or other allowances, which I shall have paid in my lifetime, or any part thereof, during the respective lives of the persons to whom the same shall have been paid by me, or during any shorter periods, continuous or discontinuous.

SPECIFIC DEVISES (*a*).

Specific devise of freeholds or copyholds in fee.

I. I DEVISE all my freehold [copyhold] messuage, or tenement, with the outbuildings and lands belonging to, or held with the same, situate, &c. [and commonly known as ——], now in the occupation of ——, with the rights, members, and appurtenances thereof [*where the testator has other adjoining property, say*, " with the rights, easements, and appurtenances thereto belonging or reputed to belong or therewith held or enjoyed " (*b*)], [SUBJECT nevertheless to the payment of the several annuities or rentcharges and legacies [and legacy duty] hereby charged upon, and made payable out of such hereditaments, and to the powers and remedies hereby given and provided for securing and raising the same respectively] to A., of, &c., his heirs and assigns.

Specific devise and bequest of real and leasehold estates in certain counties, &c.

II. I DEVISE and bequeath all and every my freehold, copyhold, and leasehold messuages, lands, tenements, and hereditaments, situate and being in the several parishes of, &c., or elsewhere, in the counties of, &c., *or*, " in the

(*a*) For devises in tail, see DEVISES IN STRICT SETTLEMENT.
(*b*) See above, p. 1237, note.

several parishes and places following (that is to say), &c.," UNTO A. of &c., his heirs, exors, admors, and assigns, according to the tenure thereof respectively.

III. I DEVISE all, &c., *parcels*, with the appurtenances thereof, TO SUCH USES, upon such trusts, and subject to such powers and provisions as A., the wife of B. of &c., shall from time to time, whether covert or sole, by deed revocable or irrevocable, or by will or codicil, appoint: AND IN DEFAULT of, and subject to any such appointment, TO THE USE of the sd A., her heirs and assigns for ever, for her separate use, independently of her present or any future husband and of his debts, control, and engagements, and so that the receipt of the sd A., notwithstanding coverture, shall be an effectual discharge, as well for the rents and profits of the sd premises, as for the proceeds of any sale, mortgage, or other disposition thereof.

Devise of freeholds to separate use of married woman.

IV. I DEVISE all, &c., *parcels*, TO THE USE of L., of, &c., his heirs and assigns, IN TRUST for A., the wife of B. of, &c., her heirs and assigns for ever, for her separate use, independently, &c., *as in last form.*

The same, copyholds.

V. I DEVISE all, &c., *parcels*, TO THE USE of L., of, &c., and his heirs during the life of A., of, &c., UPON TRUST, to pay the net rents and profits of the same hereditaments to, or permit the same to be received by the sd A. for her separate use, independently of [her sd present or] any [future] husband [(*c*) and of his debts, control, and engagements, and to permit her, whether covert or sole, to have and enjoy the same rights, powers, and privileges, as a legal tenant for life [without impeachment of waste]: AND UPON TRUST, to do all such things as may be necessary, or as the sd A. may require for the purposes aforesd], but so nevertheless that during coverture she shall not have power to dispose of the rents and profits of the sd premises by way of anticipation: AND FROM AND AFTER the death of the sd A., TO SUCH USES upon such trusts, and subject to

Devise to woman for life for separate use without anticipation, with remainder as she may appoint, and in default to her in fee.

(*c*) The part in this bracket may be omitted if brevity is desired.

such powers and provisions as the sd A. shall from time to time, whether covert or sole by will or codicil, and while sole by any deed or deeds revocable or irrevocable, appoint; And in default of, and subject to any such appointment, To the use of the sd A. her heirs and assigns for ever.

Devise to children of testator or another person as tenants in common in fee with cross limitations over on death under 21, &c. (*d*)

vi. I devise all, &c., *parcels*, To the use of all or any my children or child who shall be living at my decease, [the children or child of the sd ——, who shall be living at my decease, or born afterwards], their, his, or her heirs and assigns, if more than one in equal shares as tenants in common, and if and so often as any such child shall, being a son, die under the age of twenty-one years, or, being a daughter, die under that age and without having been married, then as well as to the original share of the child so dying, as to any share or shares which shall have accrued to him or her by virtue of this present limitation, To the use of the others or other of such children as aforesd, their, his, or her heirs and assigns, if more than one in equal shares as tenants in common: And in case there shall be no such child as aforesd, or all such children if more than one, or such child if only one, shall die under the age of twenty-one years, and in the case of a daughter or daughters without having been married, then, as to the entirety of the sd premises, To the use of, &c.

Proviso that devise to a class of children shall include child dying before testator leaving issue (*e*).

vii. Provided always and I declare that in case any child of mine [of the sd ——] shall die in my lifetime leaving issue surviving me, the devise hereinbefore contained to my children, [the children of the said ——] shall take effect in the same manner as if the child so dying had survived me, and died immediately after me, and so that the share or shares of the sd hereditaments and premises de-

(*d*) This form is not adapted to a devise to the children of another living person who takes no life estate. See below, Trusts for Children.

(*e*) This and the next two clauses are intended to operate in a similar manner to the 33rd section of the Wills Act. See below, Trusts for Children.

vised to him or her shall go to and devolve upon his or her heirs or devisees accordingly (*f*).

Devise with provision against lapse in case of devisee leaving issue (*f*).

VIII. I DEVISE all, &c., *parcels*, To THE USE of A., his heirs and assigns, in case he shall survive me, or die in my lifetime leaving issue surviving me, and so that in the latter case such devise shall take effect in favour of his heirs or devisees in the same manner as if he had survived me and died immediately after me.

Proviso against lapse in case of devisee leaving issue (*f*).

IX. PROVIDED ALWAYS and I declare that, in case the sd —— [any of them the sd ——, ——, and ——] shall die in my lifetime leaving issue living at my death, the devise hereinbefore made to him [or her] shall not lapse, but shall take effect in favour of his [or her] heirs or devisees in the same manner as if he [or she] had died immediately after me.

Devise to a person or his children by substitution.

X. I DEVISE all, &c., *parcels*, To THE USE of A., his [her] heirs and assigns; but in case he [she] shall die in my lifetime, then I devise the same premises, To THE USE of his [her] children or child, if any, who shall be living at my death, their his or her heirs and assigns, in equal shares, as tenants in common.

Devise to infant with gift over.

XI. I DEVISE all, &c., *parcels*, To THE USE of, *infant*, his [her] heirs and assigns; but in case the sd, *infant*, shall die in my lifetime [(*g*) without leaving issue which shall be living at my decease], or shall survive me and afterwards die under the age of twenty-one years without leaving issue living at his [her] decease, then I devise the same premises To THE USE of ——, his heirs and assigns.

Devise to wife for life, with remainder to two persons in joint tenancy or in common, without trustees.

XII. I DEVISE all, &c., *parcels*, To THE USE of my dear wife, C., during her life [widowhood], and from and after her decease [or future marriage] To THE USE of my sons, D. and E., their heirs and assigns for ever, as joint tenants [*or*, in equal shares as tenants in common].

(*f*) See above, p. 1248, note.

(*g*) The words in brackets will be proper where the legatee is a child of the testator, and it is intended that the 33rd section of the Wills Act shall apply.

Devise of house and furniture for use of unmarried daughters for limited period.

XIII. I DECLARE that such of my sd daughters as shall from time to time be spinsters shall be entitled to the personal use, occupation, and enjoyment, free from [rent,] rates, and taxes, for the period of twelve months after my death (in case they shall respectively desire the same), of my residence situate, &c., or any other dwelling-house in which I may reside at my death, together with the stable, coach-house, gardens, pleasure-grounds, and appurtenances thereto belonging or therewith held, and the furniture and effects of domestic, stable, or garden use or ornament which at the time of my death shall be in or about the same or appropriated thereto, they or she keeping the same in good tenantable repair and condition, and insured against fire, but without liability for fair wear and tear: AND SUBJECT thereto I devise and bequeath the same hereditaments, effects, and premises unto my son K., his heirs, exors, admors, and assigns absolutely, *or*, "I declare that the same shall form part of my residuary real and personal estate, and shall pass by the general devise and bequest hereinafter contained."

Devise to uses in favour of illegitimate child so as to prevent escheat. (*a*)

XIV. I DEVISE, &c. to such uses, UPON SUCH trusts, and with and subject to such powers and provisions, as A., of ——, shall, by any deed or deeds revocable or irrevocable, or by will or codicil appoint; and in default of, and subject to any such appointment, TO THE USE of the sd A. in tail, with remainder TO THE USE of my own right heirs.

Short form of gift for life, subject to condition of residence. (*b*)

XV. I DEVISE my mansion-house of —— at ——, with the outbuildings, gardens, grounds, and lands occupied by me therewith, to A., of ——, during such part of his life as he shall make the same his principal residence; And from and after his death, or ceasing to make the sd premises his principal residence, I devise the same, &c.

(*a*) If the property were limited to the devisee in fee, and he were to die without issue, and without having disposed of it inter vivos or by will, it would escheat. The object would of course be defeated if the devisee were to appoint to himself in fee.

(*b*) Conditions of this kind are highly objectionable, and though this form is inserted, its use is to be deprecated.

Devise of advowson. (*b*)

XVI. I DEVISE my advowson of —— to, *trustees*, their heirs and assigns, UPON TRUST, if and so often as a vacancy in the sd living shall occur before the sd advowson shall be sold under the trusts hereinafter declared concerning the same, to present some duly qualified person thereto; and I declare that if, on the occurrence of any such vacancy, my son —— shall be duly qualified and willing to hold such living, and shall, in the judgment of my trustees, be a fit and proper person in respect of his character and habits and otherwise to hold the same, my trustees shall present him thereto; and upon further trust, during the incumbency of my sd son, or during the incumbency of any other person with the consent of my sd son if living, to sell the same advowson, and hold and apply the net proceeds thereof in the same manner and upon the same trusts as if the sd advowson had been comprised in the devise of my residuary real estate hereinafter contained.

Devise charged with legacy or annuity.

XVII. I DEVISE all, &c., TO THE USE of ——, his heirs and assigns, subject to and charged with the payment to —— of a legacy of £——, with interest thereon after the rate of £—— per cent. per annum from my death [*or*, "of an annuity of £—— during his life, to commence from my death, and to be payable, &c.," *see* "ANNUITIES," p. 1256, *form* I.].

Devise subject to mortgage.

XVIII. I DEVISE all, &c., to the use of —— his heirs and assigns, subject to and charged (in exoneration of my personal estate and my other real estate, if any, charged therewith), with the payment of all principal moneys and interest specifically charged thereon by any mortgage or mortgages, and any other charges and incumbrances affecting the same at my death.

Declaration that specifically devised estates shall be

XIX. AND I DECLARE, that all sums specifically charged on the —— estates, or any part thereof at my death, shall as between the persons taking the same estates under this my will, and the persons interested in my personal estate and

(*b*) See other forms, 11 Byth. 780, 800; 4 Dav. Prec. 533, 2nd ed.

taken subject to charges.

my other real estates, under this my will, or any codicil hereto, be considered as exclusively charged on the —— estate, in exoneration of my personalty, and other real estates.

Devise free from mortgage debt.

XX. I DEVISE all, &c., to the use of A. of, &c., his heirs and assigns, free and discharged from all the principal moneys and interest charged thereon by an indre dated, &c., which I declare shall be paid out of my personal estate in exoneration of the sd hereditaments and premises.

Devise to uses of settlement.

XXI. I DEVISE all my freehold messuages, lands, and hereditaments situate in the parishes of —— and ——, in the county of ——, unto the sd A. and B. and their heirs, TO THE USES, upon the trusts, and with and subject to the powers and provisions declared and contained by and in an indre of settlement dated, &c., and expressed, &c. concerning the freehold hereditaments thereby settled, or such of the same uses, trusts, powers, and provisions as shall at the time of my death be subsisting or capable of taking effect, but not so as to increase or multiply charges or powers of charging.

GIFTS OF RESIDUE.

Personalty to beneficiary.

I. I BEQUEATH all my personal estate and effects whatsoever and wheresoever not otherwise disposed of by this my will, or any codicil hereto, [except chattels real,] subject to and after payment of my funeral and testamentary expenses and debts, and the legacies and annuities bequeathed by this my will, or any codicil hereto, and the legacy duty on any legacies or annuities bequeathed free of duty, *or*, "all the residue of my personal estate and effects whatsoever and wheresoever," unto A. of, &c., his

exors, admors, and assigns, for his and their absolute benefit, *or*, "unto A. of, &c., absolutely."

Realty and leaseholds to beneficiary.

II. I DEVISE all my manors, messuages, lands, tenements, and hereditaments, of whatsoever tenure, and wheresoever situate, *or*, "all my real and leasehold estates whatsoever and wheresoever," *or*, "all my real estate, including chattels real," not otherwise disposed of by this my will, or any codicil hereto, [charged in aid of my personal estate with the payment of my funeral and testamentary expenses and debts, and the legacies and annuities bequeathed by this my will, or any codicil hereto, and the legacy duty on any legacies or annuities bequeathed free of duty] UNTO AND TO THE USE of A. of, &c., his heirs, exors, admors, and assigns respectively, for his and their absolute benefit.

Realty and personalty to beneficiary.

III. I DEVISE and bequeath all the residue of my personal estate and effects whatsoever and wheresoever, and all my real estate of every tenure and wheresoever situate, not otherwise disposed of, [charged in aid, &c., *as above*, *form* II.] UNTO AND TO THE USE of A. of, &c., his heirs, exors, admors, and assigns respectively, for his and their absolute benefit [*or*, A. of, &c., and B. of, &c., their respective heirs, exors, admors, and assigns, for their absolute benefit, in equal shares as tenants in common].

The same. Short form.

IV. I DEVISE and bequeath all the residue of my estate and effects whatsoever, and whether real or personal, UNTO AND TO THE USE of A. of, &c., his heirs, exors, and admors absolutely.

Personalty to trustees.

V. I BEQUEATH all my personal estate and effects whatsoever and wheresoever [except chattels real and] except what I otherwise dispose of by this my will or any codicil hereto (*a*) Unto, *trustees*, their exors and admors, [upon the trusts and with and subject to the powers and provisions hereinafter declared and contained concerning the same, that is to say,] UPON TRUST, &c.

(*a*) This form is adapted to the case where the trusts provide for payment of the funeral, &c., expenses, debts, and legacies; otherwise insert here "subject to and after payment, &c.," as in form I.

Realty and leaseholds to trustees.

VI. I DEVISE all my manors, messuages, lands, tenements, and hereditaments, of whatsoever tenure and wheresoever situate, *or*, "all my real and leasehold estates whatsoever and wheresoever," *or*, "all my real estate including chattels real," except what I otherwise dispose of by this my will or any codicil hereto, [charged in aid, &c., *as in form* II.,] UNTO AND TO THE USE of, *trustees*, their heirs, exors, and admors respectively, according to the tenure thereof, [UPON THE TRUSTS, &c., *as in last form*].

Realty where copyholds are to be sold (*b*).

VII. I DEVISE all my estates and hereditaments of copyhold or customary tenure [except what I otherwise dispose of by this my will or any codicil hereto] to such uses, upon such trusts, and with and subject to such powers and provisions as, *trustees*, or the survivors or survivor of them, or other the trustees or trustee for the time being of this my will (hereinafter called my trustees) shall by deed appoint for the purpose of carrying into effect any sale or sales in pursuance of the trust hereinafter contained; AND I DEVISE all my real estate of every tenure, including chattels real [except what I otherwise dispose of by this my will or any codicil hereto], but as to copyhold or customary hereditaments in default of and subject to any appointment under the power hereinbefore contained UNTO AND TO THE USE, &c., *as in preceding form*.

Realty and personalty to trustees.

VIII. I DEVISE and bequeath all my real estate of every tenure, and all my personal estate and effects whatsoever and wheresoever, not otherwise disposed of by this my will or any codicil hereto (*c*) UNTO AND TO THE USE of, *trustees*,

(*b*) This form should be used where the testator has copyholds which are to be sold, the object being to enable the trustees to convey by appointment to the purchaser without being admitted, so as to save the fine on their admittance. See above, p. 349, note.

(*c*) If the trusts do not provide for the payment of the funeral, &c., expenses, debts, and legacies, insert here, "subject to and after payment out of my personal estate, [or in case of deficiency thereof, out of my real estate,] of my funeral and testamentary expenses, &c.," as in form I.

their heirs, exors, and admors respectively, according to the nature thereof, [upon the trusts and with and subject to the powers and provisions hereinafter declared and contained concerning the same, that is to say,] UPON TRUST, &c.

CONVERSION AND INVESTMENT.

Trust for conversion. Personalty only.

I. UPON TRUST that [(*d*) the said, *trustees*, or the survivors or survivor of them, or other the trustees or trustee for the time being of this my will, hereinafter called] my trustees, shall sell, call in, and convert into money such parts thereof as shall not consist of money in such manner as they shall think fit [but as to reversionary property not until it falls into possession, unless it shall appear to my trustees that an earlier sale would be beneficial], and so that they shall have the fullest power and discretion to postpone the sale, calling in, or conversion of the whole or any part or parts thereof during such period as they shall think proper, without being responsible for loss.

Trust for conversion. Realty and leaseholds only (*e*).

II. UPON TRUST that [(*d*) the sd, *trustees*, or the survivors or survivor of them, or other the trustees or trustee for the time being of this my will, hereinafter called] my trustees shall sell the same hereditaments and premises [but as to reversionary property not until it falls into possession, unless it shall appear to my trustees that an earlier sale would be beneficial], and so that they shall have full power and discretion to postpone the sale or conversion of the whole or any part or parts thereof during such period as they

(*d*) The words in this bracket will be omitted if the phrase, "my trustees," has already been defined.

(*e*) For a power to sell the surface and minerals separately, see above, SETTLEMENTS REAL, p. 1183.

shall think fit, without being responsible for loss, [(*f*) and I declare that my trustees may sell the same premises, either together or in parcels, and either by public auction or private contract, and upon such terms and subject to such conditions and in such manner in all respects as they shall think fit, with power to buy in or rescind or vary any contract for sale, and to resell without being responsible for loss, and for the purposes aforesaid to execute and do all such assurances and things as they shall think fit].

Trust for conversion. Realty and Personalty.

III. UPON TRUST that [(*g*) the sd, *trustees*, or the survivors or survivor of them, or other the trustees or trustee for the time being of this my will, hereinafter called] my trustees, shall sell, call in, and convert into money such parts of the sd real and personal estate and premises as shall not consist of money [but as to reversionary property not until it falls into possession, unless it shall appear to my trustees that an earlier sale would be beneficial], and so that they shall have full power and discretion to postpone the sale, calling in, or conversion of the whole or any part or parts of the sd real and personal estate and premises during such period as they shall think fit without being responsible for loss, [(*f*) and I declare that my trustees may sell the same premises, either together, &c., *as in last form*.]

The same, where the details of the trust for conversion are separated from the direction to convert.

IV. AND I DECLARE that my trustees may sell the sd real and personal estate and premises hereinbefore devised and bequeathed to them in trust for sale, either together or in parcels, &c., *as in form* II.

Power of sale of real and leasehold estate.

V. I AUTHORISE my trustees at any time or times [with the consent of my sd wife during her widowhood and afterwards] at their discretion, to sell the whole or any part or parts of my [residuary] real and leasehold estates and hereditaments, [*or*, my real and residuary personal estate,] either together or in parcels, and either by public auction or private con-

(*f*) The words in this bracket may be omitted where brevity is desired ; see 23 & 24 Vic. c. 145, s. 1, *et seq.*

(*g*) See note (*d*), last page.

tract, and upon such terms and subject to such conditions and in such manner in all respects as they shall think fit, with power to buy in or rescind or vary any contract for sale, and to resell without being responsible for loss, and for the purposes aforesd to execute and do all such assurances and things as they shall think fit; And I declare that my trustees shall stand possessed of the net proceeds of any such sale, after payment of the expenses thereof [upon the trusts and with and subject to the powers and provisions hereinbefore declared and contained of and concerning the net proceeds of the sale of my residuary personal estate], [*or, if the personal estate is included in the present power of sale*, upon trust [with the like consent, or] at the like discretion to invest the same in the names [or under the legal control] of my trustees in or upon, &c., *investments*, *see* "SETTLEMENTS PERSONAL," p. 1049, *form* IV., V., *or* VI., with power [with the like consent, or] at the like discretion to vary or transpose such investments into or for others of the like nature; And shall hold such net proceeds of sale (whether arising from real or personal estate) and the investments thereof, Upon the trusts and with and subject to the powers and provisions hereinbefore declared and contained of and concerning my residuary personal estate,] and so that the proceeds of the sale of my real estate, and all investments of such proceeds, shall, for the purpose of transmission as well as for all other purposes, be deemed personal estate.

Variations, where the power extends to personal estate. (*g*)

VI. I AUTHORISE my trustees, at any time or times [with the consent in writing of such of my children as shall then be living and of full age, or the majority in number of them, and if there shall be no such child] at their discretion, to appropriate any part of my estate, whether real or personal, hereinbefore devised and bequeathed to my

Power to allot specific property in satisfaction of legacy or share of residue.

(*g*) In this form the real estate when converted remains personalty. For forms of powers of sale providing for re-investment in land, see below, DEVISES IN STRICT SETTLEMENT. For a power to sell the surface and minerals separately, see above, SETTLEMENTS REAL, p. 1183.

trustees in trust as aforesaid, in its then actual condition or state of investment, in or towards satisfaction of any legacy or share in the sd trust premises, with power for that purpose conclusively to determine the value of the sd trust premises or any part or parts thereof in such manner as they shall think fit, [Provided also and I declare that any property appropriated under the power lastly hereinbefore contained in satisfaction of any legacy or share not absolutely vested in possession and immediately payable or transferable shall, notwithstanding such appropriation, remain subject to the [trusts and] powers of sale and conversion and investment and varying investments and leasing and management [until sale] herein declared and contained concerning the sd trust premises hereinbefore devised and bequeathed in trust as aforesd, or such of the same trusts and powers as may be applicable thereto, in the same manner as if no such appropriation had been made].

Power to partition testator's property instead of converting it.

VII. I AUTHORISE my trustees [with the consent of, &c., and if there shall be no such person], at their discretion, to make a partition of my net residuary estate, real or personal, or any part or parts thereof, into shares, and to allot such shares in satisfaction wholly or in part of the several shares of the sd trust premises, with power for that purpose conclusively to determine, &c., *continue as in preceding form.*

Option to sons to purchase real or leasehold estate at a valuation.

VIII. I DECLARE that my sons ——, ——, and ——, shall have the option in succession, according to their respective seniorities, of purchasing my —— and hereditaments, situate, &c., at the price of £—— [at a valuation to be made by a valuer appointed by my trustees], such option to be declared in writing by my eldest son within six calendar months after my death, and by each of my other sons within one calendar month after the expiration of the period allowed to the son next preceding him in seniority, but so that my trustees shall have power to extend the time so allowed to each or any of my sd sons in case my trustees shall think it reasonable [and I direct my trustees, on payment of the purchase

money for the same, to convey [assign] or assure the sd hereditaments and premises to the son purchasing the same, or as he shall direct].

Power to son who is trustee to purchase real or personal estate.

IX. I HEREBY AUTHORISE my sd son A., notwithstanding his being a trustee of this my will, to purchase any part or parts of my real or personal estate hereinbefore devised and bequeathed in trust as aforesd, at any sale or sales thereof by public auction, or by private contract, provided in the latter case the sale shall be conducted by the trustees or trustee of my will, other than the sd A., or be made at a price fixed by a valuer appointed by such other trustees or trustee.

Trust of proceeds of conversion for payment of debts, legacies, &c.

X. AND SHALL out of the moneys to arise from the sale, calling in, and conversion of or forming part of my sd [real and] personal estate, pay my funeral and testamentary expenses and debts and legacies [and the legacy duty on any legacies or annuities bequeathed free of duty].

Declaration as to income of real and personal estate until conversion (*a*).

XI. I DIRECT that all the net rents, profits, and income arising from the whole or any part or parts of my estate, [real or personal], hereinbefore directed to be sold, called in, or converted shall, until such sale, calling in, or conversion and, as well during the first year after my death as afterwards, be applied as if the same were income arising from the proceeds of the sale, calling in, or conversion thereof, or the investments of such proceeds, but that no reversion or other property not actually producing income shall be treated as producing income for the purposes of this my will, and that notwithstanding any postponement of conversion of my real estate hereinbefore directed to be

(*a*) Where the power to postpone conversion is not as in the forms in this collection incorporated in the trust for conversion, say, "I AUTHORISE my trustees at their uncontrolled discretion to postpone, during such period as they shall think fit, the sale, calling in, and conversion of the whole or any part or parts of my estate, real or personal, hereinbefore directed to be converted, but I direct that all the net rents, profits, and income arising from the same or any part or parts thereof until such sale, calling in, or conversion, shall as well, &c."

converted, the same shall for the purpose of transmission be considered as converted from the time of my death.

Declaration as to income of property of a wasting nature where there is no trust for conversion.

XII. I DECLARE that all rents, profits, or income arising from, or receivable in respect of any leaseholds, or annuities, or other property of a terminable or wearing out nature, whether real or personal, which shall for the time being constitute part of my residuary estate, and be vested in possession, shall for all the purposes of my will, and as between all persons interested hereunder, as well during the first year after my death, as at all times afterwards, be considered and applied as part of the annual income of my sd residuary estate [and that all annuities, yearly rents, and other periodical payments, payable out of my estate, not being instalments in repayment of principal money, shall be paid or satisfied out of the annual rents, profits, or income of my sd residuary estate].

Trust for investment of residue or legacy.

XIII. AND SHALL invest the residue of the sd moneys [the sd sum of £——] (*b*) at the discretion of my trustees in the names [or under the legal control (*c*)] of my trustees in or upon, &c., *investments and power to vary, see* "SETTLEMENTS PERSONAL," p. 1049, *form* IV., V., *or*, VI., *omitting if necessary the words*, "with such consent or," *in the power*

(*b*) If the investment is to be with the consent of the beneficiaries, say, in the case of testator's widow, "with the consent in writing of my sd wife during her life [widowhood], and afterwards, at the discretion, &c.;" in the case of any other tenant for life, "with the consent in writing of the sd, *tenant for life*, during his [her] lifetime, and afterwards, at the discretion, &c.;" in the case of successive tenants for life, "with the consent in writing of the sd, *tenants for life*, or the survivor of them, during their, his, or her, lifetime, and afterwards, &c.;" where there may be infants entitled in possession, "with the consent in writing of the person or persons of full age, if any, for the time being entitled to the income of the sd trust premises or any part thereof, and otherwise at the discretion, &c."

(*c*) These words to be inserted where securities passing by delivery are authorised.

to vary, [*or if an investment clause in another part of the will is referred to, say,* "in or upon any stocks, funds, or securities hereinbefore, *or,* "hereinafter," authorised as investments in the case of the sd legacy of £ ——, *or,* "my residuary estate," and may [with such consent or] at such discretion as aforesd vary or transpose such investments into or for others of the like nature "].

Direction for investment of a legacy or share given to an infant or settled.

XIV. PROVIDED ALWAYS, and I direct that my trustees shall invest the legacy, *or,* "share of my residuary estate," *or,* "of the sd trust premises," hereinbefore bequeathed to or in trust for the sd —— [with his consent in writing during his life if of full age, and at any other time] at the discretion, &c., *as in last form.*

General direction for investment of all legacies or shares settled or given to infants.

XV. PROVIDED ALWAYS, and I direct that my trustees shall invest every legacy, *or,* "share of my residuary estate," *or,* "of the sd trust premises," which shall not be absolutely vested in possession and immediately payable or transferable [with the consent in writing of the person of full age (if any) for the time being entitled to the income thereof, and in case there shall be no such person] at the discretion, &c., *as in form* XIII.

Direction as to annuities payable by testator under covenants in daughters' settlements.

XVI. I DIRECT that the several annuities which in the several indres of settlement dated, &c., executed on the respective marriages of my daughters —— and —— I have covenanted to pay, shall be paid and kept down out of the income of the sd trust premises.

GENERAL POWERS OF APPOINTMENT.

General power of appointment to one.

I. IN TRUST for such person or persons, (*g*) for such purposes, and in such manner as the sd, *donee,* shall from

(*g*) For real estate, insert here, "for such estate or estates, interest or interests, subject to such powers and provisions;" and if the limitations are legal, say, "to the use of," instead of "in trust for."

time to time [whether covert or sole] by any deed or deeds revocable or irrevocable or by will or codicil appoint; And in default of and subject to any such appointment, in trust, &c.

The same to two and the survivor.

II. In trust, &c., *as above*, as the sd, *donees*, shall from time to time by any deed or deeds revocable or irrevocable jointly appoint, and, in default of and subject to any such appointment, then as the survivor of them the sd, *donees*, shall from time to time in like manner or by will or codicil appoint; And in default of and subject to any appointment under either of the powers hereinbefore contained, in trust, &c.

LIFE INTERESTS (*a*).

Life interest in personalty. Variations for realty or a mixed fund of

I. And shall pay the income of the sd sum of £——, *or*, "share," and the investments representing the same, *or*, "the sd trust premises constituting or representing my residuary estate," *or*, "my sd residuary trust estate (*b*)," to the sd —— [or permit or empower him [her] to receive

(*a*) The forms under this and the next three headings are adapted only to real and personal estate held in trust. For legal limitations of real estate, see Specific Devises, and Devises in Strict Settlement.

(*b*) For real estate not directed to be converted, say, "net rents and profits of the sd hereditaments and premises [after payment of all outgoings and expenses, which may be payable, or which my trustees may think fit to pay thereout, and the interest on any principal sums, and any annual sums charged thereon"]. For a mixed fund of realty and personalty, say, "net rents, profits, interest, dividends, and annual produce [*or*, rents, profits, and income] of the sd real and personal estate and premises [after payment, &c.," as above].

the same] during his [her] life [widowhood] [*for the separate use of a woman, say,* to the sd —— during her life, and so that during [her present or any future] coverture the same shall be for her separate use independently of her husband without power of anticipation, and her receipt alone shall be a discharge for the same].

realty and personalty; and for separate use.

II. And after the death of the sd —— [death or marriage of my sd wife, *or as the case may be*] shall pay the income (*c*) of the same trust premises, *or as the case may be,* to ——, if surviving during his [her] life [*for separate use, see last form*].

Life interest in remainder as above.

III. Upon trust, that if at the time of my death [*or, if the life interest is in remainder,* at the time of this present trust taking effect in possession], the sd K. would not, by reason of any antecedent bankruptcy, or alienation or charge, or attempted alienation or charge, or the happening of any other event, whether before or after my decease, be wholly or partially prevented from personally enjoying the life interest hereby given to him in the sd trust premises, if the same were given to him absolutely, then my trustees shall pay the income of the sd trust premises (*d*) unto the sd K. during his life or until he shall become bankrupt, or shall alienate or charge or attempt to alienate or charge the sd income or some part thereof, or until some other event shall happen whereby, if the said income or any part thereof belonged to him absolutely, he would be wholly or partially deprived of the personal enjoyment thereof, [And, in the event of the trust hereinbefore contained for payment of the sd income to the sd K. determining or failing in his lifetime, my trustees may during the residue of his life pay and apply such income or any part thereof in their absolute discretion unto or for the maintenance, support, or benefit of all or any, to the exclusion of the others

Life interest determinable on bankruptcy, &c.

Discretionary trust for application of income after forfeiture for

(*c*) See last page, note (*b*).

(*d*) For the variations for real estate, or a mixed fund of realty and personalty, see last page, note (*b*), and make corresponding alterations throughout the form.

benefit of life tenant and his family, &c. (*e*)

or other, of the following objects, namely, the sd K., and his wife, if any, and children or child and remoter issue for the time being in existence, in such shares and manner as my trustees may think fit, and in case and so long as there shall be a want of such objects other than the sd K., then unto or for the maintenance, support, or benefit of all or any, to the exclusion of the others or other, of the following objects, namely, the sd K., and the persons or person to whom or for whose benefit the sd income would for the time being be payable or applicable if the sd K. were then dead, in such shares and manner as my trustees may think fit]: AND AFTER the [death of the sd, *prior tenant for life*, and the] determination or failure of the life interest of the sd K. [and subject to the discretionary trust or power lastly hereinbefore contained], my trustees shall, &c.

The same. Short form.

IV. AND SHALL pay the income (*f*) of the sd trust premises to the sd K. during his life, unless and until some event shall happen whereby, if the said income belonged absolutely to him, he would be deprived of the personal enjoyment thereof or of any part thereof [*Discretionary trust for application of income after forfeiture, as in last form*].

The same. Another form by way of proviso.

V. AND SHALL pay the income of the sd trust premises (*f*) unto the sd K. during his life subject to the proviso next hereinafter contained; PROVIDED ALWAYS and I declare that in case the sd K. shall at any time alienate or charge, or attempt to alienate or charge, the income of the sd trust premises or any part thereof, or in case by reason of his bankruptcy or any other event (whether happening before or after my decease), the sd income or any part thereof shall or but for this proviso would belong to or become vested in some other person or persons, then the trust hereinbefore contained for payment of the sd income to the sd K., shall immediately thereupon cease and become

(*e*) As to trusts of this nature, see above, p. 1055, note (*b*).
(*f*) See last page, note (*d*).

void; [And in such event my trustees may during the residue of his life, &c., *discretionary trust for application of income for benefit of life tenant and his family, &c., as in form* III.].

VI. PROVIDED THAT, if while the sd —— shall be discovert, any event (other than her marriage) shall happen whereby, if she were absolutely entitled to the income (*h*) of the sd trust premises, the same income, or any part thereof, would become vested in or payable to some other person or persons, then her interest therein shall cease, and my trustees shall during the remainder of her life hold such income upon the trusts, and for the purposes, upon and for which the same would be held if she were dead.

Proviso determining life interest of female in income settled to her separate use on alienation during discoverture.

VII. AND SHALL pay the income (*h*) of the sd trust premises to my sd wife during her life, and so that during any future coverture the same shall be for her separate use without power of anticipation, subject to the obligation of maintaining and educating thereout such of my children as shall for the time being be minors and shall not have been married [and maintaining such of my daughters as shall for the time being be adult and spinsters], but without liability to account so long as she shall maintain and educate them respectively to the satisfaction of my trustees.

Life interest to widow charged with maintenance of children (*g*)

VIII. AND I request my sd wife, but not so as to impose any obligation upon her, to maintain and educate such of my children as shall for the time being be minors and unmarried, and to make proper annual or other allowances to such of my children as shall for the time being have attained the age of twenty-one years and shall in her opinion require the same.

Precatory direction to maintain children.

IX. AND SHALL pay the [net rents, profits, and] income of the sd trust premises to ——, ——, and —— and the survivors of them during their respective lives in equal

Tenancy in common to several for life, with

(*g*) See p. 1056, form XIX., for the full form, which can readily be adapted to this case.

(*h*) For variations for real estate or a mixed fund, see above, p. 1278, note (*l*).

trust of capital for last survivor.

shares as tenants in common, and, subject thereto, shall stand [seised and] possessed of the sd trust premises, in trust for the last survivor of them the sd ——, ——, and —— and the [heirs], exors, admors, and assigns of such last survivor absolutely.

TRUSTS FOR CHILDREN AND ISSUE (*a*).

Trust for testator's children or issue as widow shall appoint.

1. In trust for all, or such one or more exclusively of the others or other, of my children, [or remoter issue, such remoter issue to be born and take vested interests within twenty-one years after the death of my sd wife], (*b*) at such age or time, or respective ages or times, if more than one in such shares and with such executory and other trusts for their respective benefit, and such provisions for their respective advancement, either after the death or in the lifetime of my sd wife, and maintenance and education, at the discretion of my trustees or any other person or persons, and in such manner in all respects as my sd wife [while she shall continue my widow, *or if the power is not restricted to widowhood, say,* "whether covert or sole,"] (*c*) shall from time to time by any deed or deeds, revocable or irrevocable, or by will or codicil appoint, And in default of and subject to any such appointment, &c.

(*a*) See p. 1278, note (*a*).

(*b*) For real estate add here, "for such estates or estate, interests or interest."

(*c*) If the widow's life interest is determinable on her marrying again, but her power of appointment is to continue, the following proviso may be added if desired; see above, p. 1106, note (*a*):—

Proviso where wife's life interest is

"Provided always, and I hereby declare, that in the event of my sd wife marrying again the power lastly hereinbefore contained shall not be exercised by her after her

II. In trust for all, or such one or more exclusively of the others or other, of the children [or remoter issue] of the sd ——, [such remoter issue to be born and take vested interests within twenty-one years after his death [the death of the survivor of the sd —— and ——]] (*b*), at such age or time, or respective ages or times, if more than one in such shares, and with such executory and other trusts for their benefit and such provisions for their respective advancement, either after the death or in the lifetime of the sd —— [and ——], and maintenance and education, at the discretion of my trustees or any other person or persons, and in such manner in all respects as the sd —— shall from time to time by any deed or deeds, revocable or irrevocable, or by will or codicil appoint, And in default of and subject to any such appointment, &c., [*or*, as the sd —— and —— shall from time to time by any deed or deeds, revocable or irrevocable, jointly appoint, and in default of and subject to any such appointment as the survivor of them, the sd —— and —— shall from time to time in like manner, or by will or codicil appoint, and in default of and subject to any appointment under either of the powers lastly hereinbefore contained, &c.].

Trust for children or issue of tenant for life as he shall appoint. Variations where the power is given to two tenants for life and the survivor.

III. In trust for all, or any, to the exclusion of the others or other, of my children or remoter issue, [the children or remoter issue of the sd ——,] if more than one in such shares, and in such manner in all respects as my sd wife [as the sd ——] shall by any deed or deeds, revocable or irrevocable, or by will appoint, And in default of and subject to any such appointment, &c.

Trust for children or issue as widow or tenant for life shall appoint. Short form.

IV. In trust for all, or any, my children or child, [the children or child of the sd ——,] who being a

Trust for children of

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marriage so as to diminish the share to which any child of mine shall at the date of such appointment have become entitled in possession in default of appointment."

determinable on her marrying again.

testator or another person at twenty-one, &c. (*f*).

son or sons attain (*d*) the age of twenty-one years, or being a daughter or daughters attain that age or marry (*e*), if more than one in equal shares as tenants in common.

Trust for testator's children, sons at twenty-one, daughters at twenty-one or marriage with consent.

v. In trust for all, or any, my children or child, who, being a son or sons attain the age of twenty-one years, or being a daughter or daughters attain that age, or marry with the consent, if marrying after my death, of her or their guardian or guardians, (*g*), (*e*) if more than one in equal shares as tenants in common.

Trust for testator's children at twenty-one, &c., so as to exclude daughters marrying under age without consent. (*a*)

vi. In trust for all, or any, my children or child, who, being a son or sons attain the age of twenty-one years, or being a daughter or daughters attain that age or marry in my lifetime, or attain that age after my death without having previously married, or marry after my death under that age with the consent of her or their guardian or guardians (*e*), if more than one in equal shares as tenants in common.

Trust for children of testator or another person to vest immediately. (*b*)

vii. In trust for all, or any, my children or child, [the children or child of the sd ——,] (*e*), if more than one in equal shares as tenants in common.

(*d*) This wording is suitable whether the children are all under age or unmarried, or some are already of age or married; but in the latter case, if thought preferable, say, "have attained or shall attain, &c.," and, "have married or shall marry."

(*e*) For real estate add here, "their, his, or her heirs and assigns," for a mixed fund of real and personal estate, "their, his, or her heirs, exors, admors, and assigns, respectively."

(*f*) This form should not be used where the parent is living and does not take a life interest; see form VIII. below for that case. In the case of the testator's children, or those of another deceased person, the vesting may be postponed till any later age than twenty-one. For a trust for the children of another living person postponing the vesting till twenty-five as far as the law will permit, see p. 1286, form X.

(*g*) Under a trust in this form a daughter, although marrying without consent, would, if she afterwards attains twenty-one, become entitled. If it is the intention that a daughter so marrying should be absolutely excluded, the next form should be used.

(*a*) See last note.

(*b*) This form is adapted to the case where the children are all adult. An

Immediate trust for children of another living person at twenty-one, &c.

VIII. In trust for all, or any, the children or child of ——, who shall be living at my decease, or born at any time afterwards before the youngest of such children for the time being in existence attains a vested interest, (*c*) and who, being a son or sons attain the age of twenty-one years, or being a daughter or daughters attain that age or marry, (*d*) if more than one in equal shares as tenants in common.

Trust for children of testator or tenant for life at twenty-one, &c., effected by means of survivorship and accruer clause. (*f*)

IX. In trust, if there shall be but one child of the sd ——, for such one child (*e*): And if there shall be two or more children of the sd ——, then In trust for such two or more children in equal shares as tenants in common: Provided always, and I hereby declare that if there shall be more than one child of the sd ——, and any of them being a son or sons shall die under the age of twenty-one years, or being a daughter or daughters shall die under

immediate trust in this form for the children of another living person would include only those living at the death of the testator, provided there were any such children then in existence; but if the gift is in remainder, children born after the testator's death, and before the period of distribution, would share; see Hawkins on Wills, p. 68.

(*c*) A simple trust for all the children who attain twenty-one, &c. (where the parent takes no life interest), would include only those living at the testator's death or born afterwards and before any child attains a vested interest; but it is better to express this as in the text. If it is desired to extend the gift to all children, the following words may be substituted, "who shall be living at my decease, or born at any time afterwards during the life of the sd —— or after his decease." As in that case the fund will not be distributable till the death of the parent, provision should be made for the payment of the income in the meantime to the children for the time being in esse and of age, or for their benefit during minority. As to the right to the income in the absence of express provision, see *Scott* v. *Lord Scarborough*, 1 Beav. 154.

(*d*) See last page, note (*e*).

(*e*) For real estate, add here, "his or her heirs and assigns;" for a mixed fund of realty and personalty, "his or her heirs, exors, admors, and assigns respectively;" and make corresponding alterations in the rest of the form.

(*f*) This form of trust is now seldom used, being superseded in practice by form IV. above, but it may occasionally be found useful.

that age without having been married, then as well the original share intended to be hereby provided for as the share or shares by virtue of this present clause or proviso accruing to each such son or daughter so dying as aforesd, [or so much thereof as shall not have been applied or disposed of for the advancement of any such child under the power for that purpose hereinafter contained,] shall from time to time go, accrue, and belong to the others or other of such children, and so far as circumstances will admit shall vest in them, him, or her, if more than one in equal shares as tenants in common at such and the same time or times and in such and the same manner as is hereinbefore provided concerning their, his, or her original shares or share: PROVIDED ALSO, and I further declare that if there shall be no child of the sd ——, or if there shall be one or more such child or children, but such child if only one, or all such children if more than one, shall, being a son or sons die under the age of twenty-one years, or shall being a daughter or daughters die under that age and without having been married, then my trustees shall hold the same trust premises, or so much thereof as shall not have been applied or disposed of for the advancement of any such child or children under the aforesd power, IN TRUST, &c.

Trust for children of another living person postponing the vesting to twenty-five.

X. IN TRUST for all, or any, the children or child of the sd ——, who shall be living at my death, or born at any time afterwards, and who being a son or sons, attain the age of twenty-five years, or survive the survivor of me and the sd —— for the period of twenty-one years (*g*), or being a daughter or daughters, attain the age of twenty-five years, or marry, or survive the survivor of me and the sd —— for the period of twenty-one years (*g*), if more than one in equal shares as tenants in common.

(*g*) As this gift is extended to children born after the testator's death, these words are added in order to avoid the rule against perpetuities. If the parent does not take a life interest this trust may be restricted, as in form VIII., to children born before the youngest for the time being in esse attains a vested interest. For variations for real estate or a mixed fund, see above, p. 1284, note (*e*).

XI. PROVIDED ALWAYS, and I declare that if any grandson of mine shall, or would if living, attain the age of twenty-five years before the expiration of twenty-one years, computed from the time of the decease of the survivor of my children and more remote issue (if any) living at my death, then the vesting of the share of each such grandson in the sd trust premises shall be postponed until the attainment by such grandson of the age of twenty-five years.

Clause postponing vesting of grandsons' shares to the age of twenty-five if not too remote. (*a*)

XII. IN TRUST for all, or any, my children or child, who being a son or sons attain the age of twenty-one years, or being a daughter or daughters attain that age or marry, including any such child or children who may have died in my lifetime leaving issue living at my death, (*b*) if more than one in equal shares as tenants in common, [so that the share

Trust for children of testator at twenty-one, &c., including those dying in testator's lifetime leaving issue. (*c*).

(*a*) See the last note. In cases where the vesting of the shares of the children of any person other than the testator is postponed till after the age of twenty-one, it may sometimes be convenient to define the term, "majority," as in the following form, and to use the phrase, "children or child attaining majority," instead of, "children or child who being a son, &c."

"I DECLARE that the expression, 'attaining majority,' when applied to a male born in my lifetime shall mean his attaining the age of twenty-five years, and when applied to a male born after my death shall mean his attaining the age of twenty-one years, and when applied to a female born in my lifetime shall mean her attaining the age of twenty-five years or marriage, and when applied to a female born after my death shall mean her attaining the age of twenty-one years or marriage."

Definition of majority.

(*b*) For real estate, add here, "their, his, or her heirs, and assigns," and afterwards say, "shall vest in his or her heirs or devisees as part of his or her real estate." For a mixed fund of real and personal estate, add here, "their, his, or her heirs, exors, admors, and assigns, respectively," and afterwards say, "shall vest in his or her heirs, exors, admors, or devisees respectively as part of his or her real and personal estate."

(*c*) This form operates according to the 33rd section of the Wills Act in making the share of a child dying before the testator leaving issue part of his or her estate. Without this express provision such a child would be

of any such deceased child shall vest in his or her representatives as part of his or her personal estate in the same manner as if he or she had died immediately after me].

The same for children of another person. (*d*)

XIII. In trust for all, or any, the children or child of the sd ——, who being a son or sons, &c., *as in last form, inserting the words in brackets.*

Trust for children of another living person who attain twenty-five, &c., and those dying before the testator leaving issue (*e*).

XIV. In trust for all, or any, the children or child of the sd ——, who shall be living at my decease, or born at any time afterwards, and who being a son or sons attain the age of twenty-five years, or survive the survivor of me and the sd —— during the period of twenty-one years, or being a daughter or daughters attain the age of twenty-five years or marry, or survive the survivor of me and the sd —— during the period of twenty-one years, and any child or children of the sd —— who may have died in my lifetime, leaving issue living at my decease, if more than one in equal shares as tenants in common, and so that the share of any such deceased child shall devolve on his or her representatives, as part of his or her personal estate, in the same manner as if he or she had died immediately after me having attained a vested interest.

Trust for testator's children,

XV. In trust for all, or any, my children or child living at my death, and the children or child then living of any

excluded, as the gift being to a class would vest in those only who survive the testator (*Olney* v. *Bates*, 3 Drew. 319; *Browne* v. *Hammond*, Johns 210). The words in brackets at the end of the clause might be omitted, as they merely express what would be the effect of the Wills Act without them. The vesting in this case may of course be postponed to any later age than twenty-one, see above p. 1284, note (*f*); but in that case it may be proper that such restriction should not apply to deceased children.

(*d*) As to the necessity for an express gift in this case of the share of a deceased child to his or her representatives so as to prevent lapse, the case not being within the 33rd section of the Wills Act, see *In re Coleman* 4 Ch. D. 165. This form is not to be used where the parent is living but does not take a life interest. In that case the form should be modified as above, p. 1285, form VIII.

(*e*) See the last note, and above, p. 1286, note (*g*). For variations for real estate or a mixed fund, see last page, note (*b*).

then deceased child of mine, who being male attain the age of twenty-one years, (*g*) or being female attain that age or marry (*a*), if more than one in equal shares as tenants in common, but so that any grandchildren of mine shall take equally between them only the share which their parent would have taken had he or she survived me and attained a vested interest.

and children of deceased children, at twenty-one, &c. (*f*)

XVI. IN TRUST for all, or any, the children or child living at my death of ——, and the children or child then living of any then deceased child of his, who being male attain the age of twenty-one years, or being female attain that age or marry (*a*), if more than one in equal shares as tenants in common, but so that any grandchildren of his shall take equally between them only the share which their parent would have taken had he or she lived to attain a vested interest.

Immediate trust for children of another person and children of deceased children, at twenty-one, &c. (*b*)

XVII. IN TRUST for all, or any, my children or child, [the children or child of the sd ——,] living at the death of the survivor of myself and my sd wife [the sd ——] and the children or child then living of any then deceased child of mine [his], who being male attain the age of twenty-one years, or being female attain that age or marry (*a*), if more than one in equal shares as tenants in common but so that, &c., *as in last form, mutatis mutandis.*

Trust for children who survive tenant for life, and children of deceased children, at twenty-one, &c.

XVIII. PROVIDED ALWAYS, and I declare that if any child of mine shall have died in my lifetime leaving issue living at my death, such issue being male and attaining the age

Proviso substituting issue for child of testator predeceasing him (*c*).

(*f*) See the form of a separate clause substituting issue of deceased children below, p. 1289, form XVIII. The vesting in this case can be postponed to a later age than twenty-one.

(*g*) If it be desired, for the sake of consistency, to prevent the exclusion of a son who survives the testator and afterwards dies under age, leaving issue, add here, "or die under that age, leaving issue."

(*a*) For variations for real estate or a mixed fund, see above, p. 1284, note (*e*).

(*b*) For a proviso substituting issue, see form XVIII. The vesting can be postponed to a later age.

(*c*) This form can readily be adapted to the case of an immediate gift to the children of another person.

of twenty-one years, or being female and attaining that age or marrying, shall take by substitution, if more than one in equal shares as tenants in common, the share in the trust premises which such deceased child of mine would have taken under the trusts in that behalf hereinbefore declared had he or she survived me and attained a vested interest, [but so that no issue remoter than a child of such deceased child shall take, except in the case of the death in my lifetime of his, her, or their parent, and in the place of such parent (*d*)].

Proviso substituting issue for child of tenant for life predeceasing him.

XIX. PROVIDED ALWAYS, and I declare that if any child of the sd —— shall have died in my lifetime, or in the lifetime of the sd ——, leaving issue living at the death of the survivor of myself and the sd ——, such issue being male and attaining the age of twenty-one years, or being female and attaining that age or marrying, shall take by substitution if more than one in equal shares as tenants in common, the share in the sd trust premises which such deceased child of the sd —— would have taken under the trusts in that behalf hereinbefore declared had he or she survived me and the sd —— and attained a vested interest, [but no remoter issue than a child of such deceased child shall take, except in the case of the death of his, her, or their parent before the death of the survivor of myself and the sd ——, and in the place of such parent (*d*)].

Trust for issue of tenant for life excluding eldest child taking estate.

XX. IN TRUST for all, or such one or more exclusively of the others or other, of the children or remoter issue of the sd, *tenant for life*, such remoter issue to be born and take vested interests within twenty-one years after the death of the survivor of myself and the sd ——, other than (*f*)

(*d*) The part here bracketed may generally be omitted.

Variation excluding son inheriting a peerage or baronetcy.

(*f*) Where a child succeeding to a peerage or baronetcy is to be excluded, say, "other than and except any son or sons, or more remote issue, who before his or their respectively attaining the age of twenty-one years shall inherit or become heir apparent to the earldom of —— [the baronetcy now vested in——]."

and except the first or only son, or any other son or sons, who before his or their respectively attaining the age of twenty-one years shall become [indefeasibly (*g*)] entitled, or any daughter or daughters, who before her or their respectively attaining that age or marrying shall become indefeasibly entitled to the first estate in tail [male or in tail], either in possession or remainder, under an indre, dated, &c., *or*, "the will of, &c.," at such age or time, &c., *as in form* II.: AND IN DEFAULT of and subject to any such appointment in trust for all or any the children or child of the sd ——, other than and except as aforesd, who being a son, &c., *as in form* IV.: And if there shall be no child, other than and except as aforesd, of the sd ——, who being a son shall attain the age of twenty-one years, or being a daughter shall attain that age or marry, then in trust for such one or more of the sd excepted (*a*) children of the sd ——, as being a son or sons attain, &c., *as in form* IV.

Trust for children where a double share is given to the eldest son or every son, or a minimum is given to one son.

XXI. IN TRUST for all or any my children or child, who being a son or sons attain the age of twenty-one years, or being a daughter or daughters attain that age or marry, and if more than one in equal shares as tenants in common, except that the eldest, or only, such son shall take a double share [*or*, except that each son shall take double the share of each daughter], [*or*, but so that the share of my son ——, in case he attains the age of twenty-one years, shall not be less than £——.]

Trust for children unequally.

XXII. UPON TRUST to pay or transfer the sum of £——, or stocks funds or securities of equivalent value, to my son ——, in case and when he attains the age of twenty-one years, and to pay or transfer the sum of £——, or stocks funds or securities of equivalent value, to my daughter ——, in case and when she attains that age or

(*g*) See above, p. 1059, note (*c*).

(*a*) When the son taking a peerage, &c., is excluded, say, "excepted son or sons of the sd —— as shall attain the age of twenty-one years, if more than one in equal shares as tenants in common."

marries, and as to all the residue of the sd trust premises in trust, &c., *for all the children*, "including the sd —— and ——," *at twenty-one, &c., form* IV.

Proviso restricting total amount of daughter's share.

XXIII. PROVIDED ALWAYS, that if any daughter of mine would but for this present proviso become entitled [either by virtue of any appointment or appointments under the power hereinbefore contained, or in default of appointment, or partly in one way and partly in the other], to any share or shares in the sd trust premises which [either alone or together with the share or shares to which she shall become entitled [by virtue of any appointment or appointments under the powers contained in my marriage settlement, dated, &c., or in default of appointment, or partly in one way and partly in the other] in the property subject to the trusts of such settlement,] shall exceed in value the sum of £——, then unless the contrary shall be directed in any appointment under the power hereinbefore contained, her share or shares in my residuary estate shall only constitute a security to her for the raising and payment of the sum of £——, or such smaller sum as shall [together with her share or shares in the property subject to the trusts of the sd settlement] make up the sd sum of £—— with interest on the sd sum of £——, or such smaller sum as aforesd, after the rate of £—— per cent. per annum, from the death of the survivor of myself and my sd wife, [and the residue of her share or shares in the sd trust premises shall be applied and disposed of as if such daughter had died before me without leaving issue].

Provision as to division of trust fund where female is past child-bearing.

XXIV. PROVIDED ALWAYS, and I declare that if the sd —— shall attain the age of [fifty] years, it shall be lawful for my trustees to distribute the sd trust premises or such part thereof as would then be distributable if she were dead, without regard to the possibility of her having other children, [but so that every child of hers to whom a share in the sd trust premises shall be paid or transferred during her life shall, if required by my trustees, enter into a bond or covenant, at the expense of my estate, for refunding a

proportionate part of the same in the event of her having any other child or children who shall attain a vested interest in the sd trust premises].

Hotchpot clause.

XXV. PROVIDED ALWAYS, and I declare that no child [or grandchild] of mine [of the sd ——], who [or whose issue] shall take any part of the sd trust premises under any appointment by virtue of the power [either of the powers] hereinbefore contained, shall in default of appointment to the contrary be entitled to any share of the unappointed part thereof, without bringing the share or shares appointed to him or her [or to his or her issue] into hotchpot, and accounting for the same accordingly. (*b*)

Clause directing sums taken under marriage settlement to be brought into hotchpot.

XXVI. PROVIDED ALWAYS, and I declare that the share or shares (if any) of the trust funds or property comprised in or subject to the trusts of an indre of settlement, dated, &c., made on my marriage, to which any child of mine [or the issue of such child, or any of such issue,] shall become entitled, whether under any appointment by virtue of the power [either of the powers] therein contained, or in default of appointment, shall (unless the contrary shall be declared by me in writing, or by my sd wife after my death by writing under seal) be brought into account in the way of hotchpot as against such child [or his or her issue] in the division of the sd trust premises representing my residuary estate. (*c*)

Advances made to children by testator in

XXVII. PROVIDED ALWAYS, and I declare that all sums of money or property which I have given, or covenanted or

(*b*) The following addition to the hotchpot clause may be desirable where the trust estate may comprise land or any other property not having a definite market value:—"AND for the purpose of giving effect to the provision lastly hereinbefore contained, the sd trust premises, or any part or parts thereof, shall, as far as may be necessary, be valued (in default of any direction or provision in that behalf contained in any such appointment as aforesd,) in such manner and at such respective times as my trustees shall consider fair and proper, and such valuation shall be conclusive."

(*c*) See the last note.

his lifetime to be brought into hotchpot.

agreed to give, or which I may hereafter give, or covenant or agree to give, to or with any child of mine on his or her marriage, or otherwise for his or her advancement or establishment in life, shall in default of any direction to the contrary in writing under my hand be taken in or towards satisfaction of the share of such child [or his or her issue taking by substitution as aforesd] in the sd trust premises, and shall be brought into hotchpot and accounted for accordingly.

Provision for debtor bringing advances into hotchpot when his share is settled.

XXVIII. PROVIDED ALWAYS, and I declare that the sums, amounting to £——, which I have advanced by way of loan to my sd son A., and any other sum or sums I may hereafter advance to him, or for his benefit, or so much thereof as may be owing to me at my decease, and the interest thereon, shall not be charged or claimed as a debt owing to me from him or his representatives, but every such sum (whether legally constituting a debt or not), with interest thereon from my decease at the rate of £—— per cent. per annum (but not any interest thereon prior to my decease), shall be brought into account in the way of hotchpot in the division of my residuary estate as against the sd A. and his wife and children, or other the person or persons interested in his share of my residuary estate under the trusts hereinbefore declared.

Clause declaring trusts in favour of husband or wife and children of child dying in testator's lifetime by reference to trusts for testator's widow and children.

XXIX. AND I DECLARE that if any child of mine shall die in my lifetime leaving a wife or husband, or a child or children, [or remoter issue,] living at my death, then my trustees shall stand possessed of the share in the sd trust premises to which such child would have been entitled had he or she survived me and attained the age of twenty-one years, upon, with, and subject to such trusts, powers, and provisions in favour of the surviving wife or husband, and child or children, [and remoter issue,] respectively of such deceased child of mine as shall correspond with the trusts, powers, and provisions hereinbefore declared and contained concerning the sd trust premises in favour of my wife and child or children, [and remoter issue,] respectively in the same

manner as if such trusts, powers, and provisions were herein repeated with such modifications as the case may require, [except that the surviving wife or husband if any of such deceased child of mine shall not have any power of appointment among the issue of such child].

SETTLEMENT OF CHILDREN'S SHARES. (*h*)

Commencement of trusts of daughters' or children's shares.

1. PROVIDED ALWAYS, and I declare that my trustees shall retain the share in the sd residuary moneys, *or*, "legacy," *or*, "trust premises," hereinbefore given to each daughter [child] of mine (*a*), [*if the share consists of money* (*b*) *say*, "and shall at their discretion (*c*) invest such share in the names [or under the legal control] of my trustees in or upon, &c., *investments and power to vary*, p. 1049, *form* IV., V., *or* VI.].

The same. Another form.

II. AND I DECLARE that my trustees shall [after the decease of my sd wife] divide the said residuary moneys, *or*,

(*h*) See above, p. 1278, note (*a*).

(*a*) Where the trusts of each share are declared separately, say, "given to my daughter [son] K.," and make corresponding alterations in the remaining trusts.

(*b*) *E. g.* where there is a trust for conversion and an immediate trust of the proceeds for the children. In most cases, as where the widow takes a life interest, the trust for investment will precede the trust for division among the children.

(*c*) If it is desired that the investment should be with the consent of the beneficiary, say, "with the consent in writing of such daughter [child], if living and of full age, and at any other time at the discretion of my trustees," *or*, "with the consent in writing of the person for the time being beneficially entitled for his or her life to the income of such share, if of full age, and if there shall be no such person, at the discretion of my trustees;" or if the trusts of each share are declared separately, "with the consent in writing of the sd K., if living and of full age, and at any other time at the discretion of my trustees."

"legacy," *or*, "trust premises" into —— equal shares, and shall hold such respective shares upon the trusts hereinafter declared concerning the same respectively, that is to say, as to one of such —— shares, my trustees shall, &c., *trust for investment, if necessary, and ulterior trusts*, and as to —— others of such —— shares, my trustees shall, &c.

First life interest to daughter for separate use.

III. And shall, during the life of such daughter, pay the income (*d*) of her sd share to her (*e*), and so that during any coverture the same shall be for her separate use independently of her husband, without power of anticipation, and her receipt alone shall be a discharge for the same.

Life interest to child, whether son or daughter. (*f*)

IV. And shall, during the life of such child, pay the income (*d*) of his or her sd share to him or her, and so that the income (*d*) of the share of any daughter shall, during coverture, be for her separate use independently of her husband, without power of anticipation, and her receipt alone shall be a discharge for the same.

Second life interest to husband or wife.

V. And shall, after the death of such daughter [child], pay the income (*d*) of such share to any husband [wife or husband] whom she [he or she] may leave surviving during his [her or his] life.

Second life interest to present husband or wife.

VI. And shall, after the death of my said daughter [son] K., pay the income (*d*) of such share to her husband [his wife], the sd L., if surviving during his life [her life for her separate use without power of anticipation].

Power of appointment among children or remoter issue of daughter or child.

VII. And after the death of such daughter [child], [*if surviving husband and wife take life interests, say*, "of such daughter and her surviving husband, if any," *or*, "of such child and his or her surviving wife or husband, if any,"] shall hold such share upon trust for all or such one or

(*d*) For real estate, say, "rents and profits," for a mixed fund of real and personal estate, say, "rents, profits, and income."

(*e*) If the daughter may be under age, provision for maintenance, &c. should be made. See MAINTENANCE, p. 1311, form VII.

(*f*) For forms for life interests determinable on bankruptcy, &c., or protected against creditors, &c., see pp. 1279—1281.

more exclusively of the others or other of the children [or remoter issue] of such daughter [child], &c., *continue power of appointment to daughter or child, or to both parents or survivor*, p. 1283, *form* II. *or* III., *mutatis mutandis, with the variation in the note for real estate.*

Trust for children in default of appointment.

VIII. AND IN DEFAULT of, and subject to any appointment under the power [either of the powers] hereinbefore contained, in trust for all or any the children or child of such daughter [child] of mine, who shall be living at my decease or born afterwards, and who being a son or sons attain the age of twenty-one years, or being a daughter or daughters attain that age or marry (*g*), and if more than one in equal shares as tenants in common.

Hotchpot-clause. (*a*)

IX. *Hotchpot*, p. 1293, *form* XXV., *saying*, "child of such daughter [child] of mine, who or whose issue shall take any part of the share of such daughter [child] of mine, under any appointment," &c., *and see the addition in the note for real estate.*

Ultimate trust of settled share for testamentary appointees of child.

X. PROVIDED ALWAYS, and I declare that subject and without prejudice to the trusts and powers hereinbefore [or hereinafter] declared and contained concerning the share of any such daughter [child] of mine as aforesd, and to every or any exercise of any such powers, my trustees shall hold such share and the income (*b*) thereof, in trust for such person or persons, for such purposes, and in such manner in all respects as such daughter [child] shall by will or codicil appoint.

Trust in default of appointment for daughter's next of kin excluding a surviving husband.

XI. AND IN DEFAULT of and subject to any such appointment, IN TRUST for such person or persons as would have been entitled thereto under the statutes for the distribution of the personal estate of intestates at the death of such daughter, had she died possessed thereof intestate and without having been married, such persons, if more than one,

(*g*) For variations for real estate, or a mixed fund, see above, p. 1284, note (*e*).

(*a*) For maintenance, &c., clauses adapted to this case, see p. 1308.

(*b*) For variations for real estate or a mixed fund, see last page, note (*d*).

to take as tenants in common in the shares in which they would have taken under the same statutes.

Accruer clause.

XII. PROVIDED ALWAYS, and I declare that subject and without prejudice to the trusts and powers hereinbefore [or hereinafter] declared and contained concerning the share of any such daughter [child] of mine as aforesd, and to every or any exercise of such powers, such share and any additional share or shares which may accrue or be added thereto by virtue of this present proviso and the income (*c*) thereof respectively, shall go and accrue by way of addition to the share or shares of my other children or child in the sd trust premises, if more than one in equal shares and proportions, and so that the share which shall so accrue and be added to the share of any daughter [child] of mine shall be held upon the trusts, and with and subject to the powers and provisions herein declared and contained concerning her [his or her] original share, or as near thereto as circumstances will admit.

Power to daughter to appoint life interest to her husband.

XIII. PROVIDED ALWAYS, and I declare that it shall be lawful for every daughter of mine [in case she shall have no child [or remoter issue] who shall attain a vested interest in her said share] by deed, executed prior to and in contemplation of marriage, or by will or codicil, to appoint unto or for the benefit of any husband who may survive her an interest for the term of his life, or any less interest, in the whole or any part of such share, and subject to any conditions or restrictions she may think fit, and that, in the event of any such appointment being made, the interest so appointed unto or for the benefit of such surviving husband shall take effect in precedence of and priority over the trusts and provisions hereinbefore declared and contained concerning the share of such daughter to take effect after her death [and in default of any child [or remoter issue] of hers attaining a vested interest].

Trusts of daughter's share of

XIV. AND I DECLARE that my trustees shall hold another

(*c*) For variations for real estate or a mixed fund, see above, p. 1296, note (*d*).

equal —— share in the said trust premises, and the income (*c*) thereof upon the like trusts, and with and subject to the like powers and provisions in favour of my daughter L. and her [husband and] issue [and next of kin], and otherwise, [and with the like ultimate provision for accruer to the other shares in the sd trust premises] as are hereinbefore declared and contained concerning the share of the sd K. in the sd trust premises, and the income (*c*) thereof, in the same manner in all respects as if such trusts, powers, and provisions were herein repeated with the substitution of the name of the sd L. for the name of the sd K. [save and except, &c., *specify any variations in the trusts*].

residue declared by reference to a share already settled (*d*).

XV. PROVIDED ALWAYS, and I authorise my trustees, in case they in their absolute discretion shall think fit, at any time during the life of any daughter of mine who shall marry after my death [and under the age of —— years], and either in contemplation of or after her marriage, to settle all or any part of the share or shares in the sd trust premises hereinbefore bequeathed to such daughter upon such trusts as my trustees shall think fit for the benefit of such daughter and her husband, or intended husband, and any future husband, and any children or more remote issue of hers (whether by her then present or intended husband or any future husband), or for the benefit of any of such objects, and with such ulterior or ultimate trusts, [such trusts being for the benefit of some issue of mine, or all or any of the statutory next of kin of any such issue,] and with such other provisions as my trustees shall think fit, with liberty for my trustees or any or either of them to act themselves or himself as the trustees or trustee of such settlement, or to nominate any other persons or person to act either alone or in conjunction with them or any or either of them as such trustees or trustee: And the payment or transfer of the shares of my sd daughters, or any of them, in the sd trust premises, may be wholly or partially suspended by my

Power to trustees to settle daughters' shares.

(*d*) See also the form XIX. below, p. 1301, of a legacy to a daughter or son upon trusts declared by reference with variations.

trustees accordingly during the whole lifetime of such respective daughters [*or*, until they shall respectively attain the age of —— years], or such less period as my trustees may think fit, and the income of the respective shares or parts thereof so retained shall be paid to such respective daughters after they shall respectively have attained the age of twenty-one years or married, and become entitled to such respective shares in possession, until such settlement thereof as aforesd shall be executed: Provided nevertheless that my trustees shall be at liberty, at their absolute discretion, to pay or transfer the share or shares of any of my sd daughters, or any part thereof respectively to her or them, in which case the power hereinbefore given to my trustees to settle the same shall cease as regards the share or shares or part thereof so paid or transferred.

Power to daughter to appoint part of the funds settled by the will on her second marriage.

XVI. PROVIDED ALWAYS, and I declare that if any daughter of mine shall survive her present [*or* first] husband and marry again, then and in such case it shall be lawful for her either before or after any subsequent marriage, by any deed or deeds revocable or irrevocable, or by will or codicil, to appoint that any part not exceeding one moiety of her share in the sd trust premises shall from and after her death be held in trust as to all or any part of the income thereof for her after-taken husband if he shall survive her during his life or any less period, and subject to any conditions or restrictions which she may think fit, and subject to the interest if any so given to such after-taken husband, in trust for all or any of her children or remoter issue by any such subsequent marriage, such remoter issue to be born and take vested interests in her lifetime or within twenty-one years after her death, at such ages or times, age or time, if more than one, in such shares, and generally in such manner as such daughter of mine shall think fit: PROVIDED ALWAYS, that subject and without prejudice to any such appointment as last aforesd the property comprised in any such appointment shall be held upon such of the trusts and with and subject to such of the powers and provisions herein-

before declared and contained concerning the same as shall be subsisting or capable of taking effect.

Trusts of share of daughter dying in testator's lifetime leaving issue.

XVII. PROVIDED ALWAYS, and I declare that if any daughter of mine shall die in my lifetime leaving issue living at my death, then the share or shares, whether original or accruing in the sd trust premises, *or*, "legacy," hereinbefore directed to be held upon trusts for her and her issue or otherwise in the event of her surviving me, and the income (*e*) thereof shall be held upon and for the same trusts and purposes as if she had died immediately after my death so far as the same shall be capable of taking effect.

Trusts of share of son dying in testator's lifetime leaving issue.

XVIII. PROVIDED ALWAYS, and I declare that if any son of mine shall die in my lifetime leaving children living at my death, then the share or shares, whether original or accruing in the sd trust premises, *or*, "legacy," hereinbefore bequeathed in trust for him in the event of his surviving me and the income (*e*) thereof shall be held in trust for all or any his children or child, &c., *continue trust for children at twenty-one*, p. 1283, *form* IV.; And if there shall be no such child, shall go and accrue by way of addition, *continue as in accruer clause*, p. 1298, *form* XII.

Trusts of a legacy to a daughter or son by reference, with variations.

XIX. I GIVE AND BEQUEATH the sum of £—— to my trustees upon and for the like trusts and purposes, and with and subject to the like powers and provisions in favour of my daughter ——, and her [husband], children, [or remoter issue], [and next of kin] and otherwise, [*or*, my son ——, and his wife, children, &c.,] as are hereinbefore declared of and concerning the sd sum of £—— in favour of my sd daughter —— and her [husband], children, [or remoter issue], [and next of kin] and otherwise [inclusive of a power to the sd ——, to appoint a life interest to a surviving husband, and so that such power shall include her present husband and not be confined to a future husband as the power of the sd —— is hereinbefore confined, *or*, "and except that the husband of my sd daughter —— shall not take a life interest therein," and except that, *specify any other*

(*e*) For variations for real estate or a mixed fund, see p. 1296, note (*d*).

variations; or if the bequest is to a son, say "a simple life interest being in the case of my sd son ——, substituted for the life interest hereinbefore given to my sd daughter —— for her separate use without power of anticipation"].

Trust for improvident son (*f*).

XX. I HEREBY BEQUEATH the sum of £—— to my trustees, upon trust to invest the same at their discretion in their names [or under their legal control] in any of the investments hereinafter authorised in the case of my general estate with power from time to time to vary such investments at discretion, And upon further trust that my trustees shall, in their absolute discretion from time to time during the life of my son A., or during such shorter period or periods either continuous or discontinuous as they shall think fit, pay all or any part of the income of the sd sum of £——, and the investments thereof, or if they shall from time to time think fit, any part of the capital thereof, unto or apply the same for the maintenance and personal support or benefit of all or any one or more of the following persons, namely, the sd A. and his wife, if any, and his children or child and remoter issue for the time being in existence, whether minors or adults, and the other persons or person who would for the time being be entitled to or interested in the sd legacy or any part thereof under the trusts herein contained if the sd A. were then dead, in such proportions and manner as my trustees shall in their absolute and uncontrolled discretion from time to time think proper, and subject to the discretionary trust or power lastly hereinbefore contained, shall hold the sd income or so much thereof as shall not be applied under such discretionary trust or power upon the trusts and for the purposes upon and for which the sd income would for the time being be held if the sd A. were then dead: AND AFTER the death of the sd A. shall pay the income of the sd trust fund, or of such part thereof as shall remain undisposed of, to his widow, if any, during her life [widowhood], and after the

(*f*) See power to raise and pay an annual sum for the benefit of a spendthrift, p. 1258, form VIII.

death [or marriage] of such widow (if any), *trust for children of A. at twenty-one, &c., ultimate trust to fall into residuary estate.*

Trust for imbecile or lunatic child.

XXI. I HEREBY BEQUEATH the sum of £—— to my trustees upon trust, *to invest and vary investments, as in last form:* And upon further trust that my trustees shall during the life of my son [daughter] A., at their absolute discretion, pay or apply the whole or any part of the annual income of the sd sum of £——, and the investments thereof, or if they shall from time to time think fit, any part of the capital thereof unto or for the maintenance and personal support or benefit of the sd A., and may either themselves so apply the same or may pay the same for that purpose to any other person or persons without seeing to the application thereof: And shall during the period of twenty-one years from my decease, if the sd A. shall so long live, accumulate the surplus if any of such income at compound interest by investing the same and the resulting income thereof in any of the investments aforesd by way of addition to the capital of such fund, and so as to be subject to the same trusts as are hereby declared concerning the same, and shall during the remainder of the life of the sd A., in case he [she] shall survive the sd period of twenty-one years, pay or apply such surplus income (if any) to the person or persons and for the purposes, to whom and for which the same would for the time being be payable or applicable if the sd A. were then dead: And after the decease of the sd A., and subject to the trusts aforesd, shall stand possessed of the sd sum of £——, and the investments and accumulations thereof, or so much thereof as shall not have been applied or disposed of under the trusts aforesd IN TRUST, &c.

MISCELLANEOUS BENEFICIAL TRUSTS (*a*).

Trust for brothers and sisters of testator living at his death, and children of those dead.

I. IN TRUST for all, or any, my brothers and sisters living at my death, and the children or child then living of any then deceased brother or sister of mine, who, being male, attain the age of twenty-one years, or being female, attain that age or marry (*b*), in equal shares as tenants in common, but so that the children of any deceased brother or sister, if more than one, shall take equally between them only the share which their parent would have taken if surviving me and attaining the age of twenty-one years.

Trust for issue of nephews and nieces living at time of distribution per stirpes.

II. IN TRUST for all, or any, the children or child of my sd nephews and nieces living at the death of the survivor of my sd nephews and nieces (*c*), and the children or child then living of any then deceased child of any of my sd nephews or nieces, who, being male, attain the age of twenty-one years, or being female, attain that age or marry (*b*), if more than one, in equal shares as tenants in common, but so that the grandchildren of any nephew or niece shall take equally between them only the share which their parent would have taken had he or she been living and attained the age of twenty-one years.

Trust in remainder after several prior trusts for named persons, or such of them as are living at time of distribution, and the issue of those dead, per stirpes.

III. AND IN CASE of the failure or determination of all the trusts hereinbefore declared and contained as to the whole or any part of the sd trust premises, or the income (*d*) thereof, then as to the whole of the sd trust premises, and the income (*d*) thereof, or so much thereof respectively as to which there

(*a*) See above, p. 1278, note (*a*).

(*b*) For real estate add here, "their, his, or her, heirs and assigns;" for a mixed fund of real and personal estate, "their, his, or her, heirs, exors, admors and assigns respectively."

(*c*) Where a trust for a class of persons living at the period of distribution follows after several prior trusts, it may be more convenient to adopt the next form.

(*d*) For real estate, say, "rents and profits."

shall be such failure or determination, in trust for my brothers, *naming them*, and sisters, *naming them*, or such of my sd brothers and sisters as shall be living at the time of such failure or determination (*e*), and the issue then living and attaining the age of twenty-one years, or in the case of females marrying, of any of my sd brothers and sisters who may be then dead (*b*), in equal shares per stirpes as tenants in common.

Ultimate trust in default of children of testator or another person.

IV. And if there shall be no child of mine, *or*, "of the sd ——," living at my death, or born afterwards, who, being a son attains the age of twenty-one years, or being a daughter attains that age or marries, then subject to the trusts and powers hereinbefore declared and contained, and to every exercise of such powers, my trustees shall hold the sd trust premises and the income (*d*) thereof In trust, &c.

General form of commencement of ultimate trust.

V. And subject to the trusts and powers hereinbefore declared and contained, and to every exercise of such powers (*f*), my trustees shall hold the sd trust premises and the income (*d*) thereof In trust, &c.

Ultimate trust of personalty in favour of married woman so as to exclude her husband.

VI. In trust for such person or persons and for such purposes as the sd —— shall, while discovert by deed revocable or irrevocable, or whether covert or discovert by will or codicil, appoint: And in default of and subject to any such appointment in trust for such person or persons as would have become entitled thereto under the statutes for the distribution of the personal estate of intestates at the death of the sd ——, had she died possessed thereof intestate, and a spinster, such persons, if more than one, to take as tenants in common in the shares in which they would have taken under the same statutes (*g*).

Cross executory trust

VII. Provided always, and I declare that in the event

(*e*) Or, "at the time when this present trust shall take effect in possession."

(*f*) Or if preferred the form above, No. III., may be used.

(*g*) An absolute trust for the married woman in the event of her surviving her husband must not be inserted as in the form for Settlements at p. 1061, since a reversionary interest derived under a will might be absolutely dis-

for accruer of shares of residue where the shares, or some of them, are settled.

of the failure or determination of the trusts hereinbefore declared and contained concerning any share (*a*) in the sd trust premises, such share as well as any share or shares accruing or added thereto by virtue of this proviso and the income (*b*) thereof, or so much thereof respectively as shall not have been applied or disposed of under the trusts or powers herein contained, shall go and accrue by way of addition to the other share or shares (*c*) in the sd trust premises, and if more than one, in equal shares and proportions, and every such accruing share shall be held upon the trusts and with and subject to the powers and provisions herein declared and contained concerning the original share or shares to which the same shall be added, or as near thereto as circumstances will admit [but not so as to increase or multiply charges or powers of charging].

Accruer of shares of residue of children dying in testator's lifetime where the gifts are to them by name (*d*).

VIII. PROVIDED ALWAYS, that if any of my sd children shall die in my lifetime without leaving issue living at my death, the share in the sd trust premises hereby given to such child, *if the daughters' shares are settled, say*, " being a son, or for the benefit of such child, being a daughter, and her issue," shall sink into and form part of the sd trust

posed of by the wife in favour of her husband by deed under 20 & 21 Vic., c. 57, unless she is restrained from alienating the same, not being within the exception in s. 4 of that Act.

(*a*) Where the sons' shares are given absolutely, and the daughters' shares are settled, say, " concerning any share of a daughter of mine in the sd trust premises."

(*b*) For real estate say, " rents and profits."

(*c*) In the case mentioned in note (*a*) say, " the share or shares of my other children, both sons and daughters, in the sd trust premises, and if more than one, in equal shares and proportions, and so that the share or shares which shall so accrue and be added to the original share of any daughter of mine shall be held, &c."

(*d*) The share in the residue given to a child by name who dies in the testator's lifetime without leaving issue living at the testator's death would lapse and be undisposed of, in the absence of such a provision as that in the text.

premises, and be held and applied for the benefit of the other persons entitled thereto, in the same manner as if such share had not been given to the child of mine so dying without leaving issue.

General direction that all interests given to females shall be for their separate use.

IX. PROVIDED ALWAYS, and I declare that every estate or interest, whether in real or personal estate, and whether absolute or limited, hereby given to or in trust for any female shall be for her separate use independently of any husband, and so that in the case of any annuity or other estate or interest given to her for her life, or any reversionary or expectant interest, she shall not have power to anticipate the same.

General clause restraining alienation of life and reversionary or expectant interests in personal estate.

X. *Direction that interests of females shall be for their separate use without power of anticipation, as in last form:* PROVIDED ALSO, and I hereby declare that in case any event whatever (other than the marriage of a female) shall happen, whether in my lifetime or after my decease, whereby any male or any female not under coverture entitled to any life interest in personal estate, or to any annuity under any of the trusts or dispositions hereinbefore contained, would if such life interest or annuity belonged to him or her absolutely be deprived of the personal enjoyment thereof or of any part thereof, then such life interest or annuity shall cease as if he or she were dead: And in the case of a life interest so ceasing the income which shall be so forfeited shall be held upon the trusts upon which the same would for the time being be held if the person incurring the forfeiture thereof were dead: PROVIDED ALSO, and I declare that in case any event whatever shall happen, whether in my lifetime or afterwards, before the time hereby appointed for the vesting in possession of any legacy or share of personal estate hereby given to or in trust for a male or a female not under coverture (other than the marriage of a female), [and other than a settlement of such legacy or share or some part thereof made before or after the marriage of the legatee with the consent in writing of my trustees], whereby the person entitled thereto under the trusts or provisions here-

inbefore contained would if the sd legacy or share belonged to him or her absolutely be deprived of the personal enjoyment thereof or of any part thereof, then such legacy shall sink into my residuary estate, and such share shall be disposed of as if the legatee incurring such forfeiture had died in my lifetime without leaving issue.

MAINTENANCE, &c.

Maintenance clause. Ordinary form for children or grandchildren of testator, where shares vest at 21, &c.(*e*)

I. I DECLARE that my trustees may, after the death [or future marriage] of my wife, apply the whole, or any part at their discretion, of the income of the share in the sd trust premises (*a*), to which any child [or grandchild] of mine shall for the time being be entitled in expectancy under the trusts hereinbefore contained (*b*), for or towards his or her maintenance, education, or benefit, and may either themselves so apply the same, or may pay the same to the [parent or] guardians or guardian of such child [or grandchild] for the purpose aforesd, without seeing to the application thereof.

Accumulation clause. Ordinary form as above (*e*).

II. AND SHALL, during the suspense of absolute vesting of any such share, accumulate the surplus, if any, of the income thereof in the way of compound interest, by investing the same and the resulting income thereof in any of the investments hereby authorised, in augmentation and so as to follow the destination of the share or fund from which the same shall have proceeded, but with power to apply any such accumulations in any subsequent year for or towards

(*e*) As to the omission of the maintenance and accumulation clauses in reliance on the statute, see p. 1060, note (*a*).

(*a*) Or say, "the income of any legacy, share, or fund," or as the case may require, and make consequential alterations in the accumulation clause.

(*b*) Where there are annuities charged, add, if appropriate, "subject to and after payment of the annuities hereinbefore bequeathed, or a proportionate part thereof."

the maintenance, education, or benefit of the child [or grandchild] for the time being presumptively entitled thereto, in the same manner as such accumulations might have been applied, had they been income arising from the original trust fund in the then current year.

Advancement clause. Ordinary form as above.

III. I AUTHORISE my trustees after the death [or future marriage] of my wife, or previously thereto with her consent in writing, to raise any part or parts not exceeding in the whole a moiety of the then expectant, presumptive, or vested share of any child [or grandchild] of mine in the sd trust premises (*c*) under the trusts aforesd, and to pay or apply the same for his or her advancement or benefit as my trustees shall think fit.

Maintenance, &c., clauses for children or grandchildren of testator where the income may be applied as a common fund.

IV. I DECLARE that my trustees may, after the death [or future marriage] of my wife, apply the whole, or any part at their discretion, of the income of the share or shares in the sd trust premises, to which any child or children [grandchild or grandchildren] of mine shall for the time being be entitled in expectancy under the trusts hereinbefore contained, for or towards his or her maintenance, education, or benefit, or for or towards their common maintenance, education, or benefit, and may either themselves so apply the same, or may pay the same to the [parent or] guardians or guardian of such child or children [grandchild or grandchildren] for the purposes aforesd, without seeing to the application thereof. *The accumulation and advancement clauses will be the same as above, forms* II. *and* III., *adding after the words,* "presumptively entitled thereto," *in the accumulation clause, the words,* "or for or towards the common maintenance, education, or benefit of my children [or grandchildren], for the time being objects of the last preceding trust."

Maintenance, &c., clauses for children

V. I DECLARE that my trustees shall, after the death of

(*c*) Or say, "any expectant, presumptive, or vested legacy or share of any child [or grandchild] of mine," or as the case may require.

or grandchildren of any tenant for life.

the sd —— [and ——], apply the whole, or any part at their discretion, of the income of the share in the sd trust premises (*d*) to which any child [or grandchild] of the sd —— shall for the time being be entitled, &c., *as in form* I. (*e*); *Accumulation clause, as in form* II.: AND I AUTHORISE my trustees (*f*) to raise, &c., *continue advancement clause, as in form* III., *saying*, "child [or grandchild] of the sd ——."

Maintenance, &c., clauses adapted to various dispositions.

VI. I DECLARE that my trustees may, after the determination or failure of every prior life or other interest or interests, if any (*g*), apply the whole, or any part at their discretion, of the income of the expectant, contingent, presumptive or vested share, portion or legacy of any person, who shall be under the age of twenty-one years and being a female unmarried, under any of the trusts or dispositions herein contained, for or towards his or her maintenance, education, or benefit, and may either themselves so apply the same, or may pay the same to the parent or guardians or guardian of such person for the purpose aforesd, without seeing to the application thereof; AND SHALL during the minority of any

Accumulation.

(*d*) Or say, "the income of any legacy, share, or fund," or as the case may require, and make consequential alterations in the accumulation clause.

(*e*) The following may be added at the end of the clause if so intended, "and that without regard to the ability of the sd, *father*, if living, to maintain him or her, or the existence of any other fund applicable or available for that purpose."

(*f*) In the case of children or grandchildren of the first tenant for life, insert here, "after the death of the sd —— [and ——], or in their, his, or her lifetime, with their, his, or her consent in writing." In the case of children of a tenant for life in remainder, add at the end of the clause, "Provided that no such advancement shall be made during the existence of any prior life or other interest or interests, whether vested or contingent, without the consent in writing of the person or persons entitled thereto."

(*g*) This form is not well adapted to a case, where there are annuities or other prior interests affecting part only of the income. In that case, the next form is to be preferred.

such person being a male, and minority and discoverture of any such person being a female, accumulate, &c., *continue accumulation clause, as in form* II., *saying* "share, portion, or legacy," *and* "of the person for the time being expectantly, contingently, presumptively, or absolutely entitled thereto:" AND I AUTHORISE my trustees, after the determination or failure of every prior life or other interest or interests (if any), or previously thereto with the consent in writing of every person in existence for the time being entitled to any such prior interest or interests whether vested or contingent, to raise any part or parts not exceeding in the whole a moiety of the then expectant, contingent, presumptive, or vested share, portion, or legacy, of any such person as aforesd, under any of the trusts or dispositions aforesd, and to pay or apply the same for his or her advancement or benefit as my trustees shall think fit. Advancement.

VII. I DECLARE that my trustees may apply the whole or any part at their discretion of any income, to which any minor shall, or, if of full age being a male, or of full age or married being a female, would for the time being be entitled in possession under any of the trusts or dispositions herein contained, for or towards his or her maintenance, &c., *as in last form;* AND SHALL, during such minority, or minority and discoverture, as the case may be, accumulate the surplus, if any, of the same income (*a*), &c., *continue* Maintenance, &c., clauses. A very general form (*h*).

(*h*) This form is of the most general application, and is adapted to a case where annuities are charged, and where the infant is tenant for life.

(*a*) In the case of an infant tenant for life, if it is desired that the accumulations should belong to him if he attains twenty-one, &c., continue as follows, "in the way of compound interest, by investing the same and the resulting income thereof in any of the investments hereby authorised, and shall stand possessed of such accumulations and investments upon the trusts following, that is to say, if the person during whose minority the same shall have been accumulated shall, being a male attain the age of twenty-one years, or being a female attain that age or marry, then in trust for such person absolutely,

accumulation clause, as in form II., *saying,* "fund from which the same shall have proceeded," *and* "of any such minor as aforesd:" AND I AUTHORISE my trustees to raise any part or parts not exceeding in the whole a moiety of the capital of any share, portion, or legacy, to which any minor shall, or, if of full age being a male, or of full age or married being a female, would for the time being be entitled [whether absolutely, or for a life, or other limited interest only, and] whether in possession or in reversion or expectancy, and to pay or apply the same for his or her advancement or benefit, as my trustees shall think fit: Provided that no such advancement shall be made during the existence of any prior life or other interest or interests, whether vested or contingent, without the consent in writing of the person or persons entitled thereto.

Advancement.

Power of maintenance and advancement out of capital. Short form.

VIII. I DECLARE that my trustees may pay or apply the whole, or any part at their discretion, of the income, or the capital, of the share, to which any child shall for the time being be entitled in expectancy, and would, if of full age, be entitled in possession, under the trusts hereinbefore declared, for or towards his or her maintenance, education, advancement, or benefit, and shall invest the surplus income (if any) in any such investments as are hereby authorised, in augmentation of the capital of such share.

Accumulation clause where there is no maintenance clause.

IX. I DECLARE that during the suspense of absolute vesting of the share, *or,* "portion," *or,* "legacy," to which

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but if such person shall die under the age of twenty-one years, and (in the case of a female) without having been married, then upon trust to add the same to, and so that the same shall follow the destination of, the fund from which the same shall have proceeded, but my trustees shall have power to apply any such accumulations in any subsequent year for or towards the maintenance, education, or benefit, of any such minor as aforesd in the same manner, &c., *as in form* II.

any child, *or*, "person," shall for the time being be entitled in expectancy, under the trusts [lastly] hereinbefore contained, and to which such child, *or*, "person," if of full age, or if a female married, would be absolutely entitled in possession, my trustees shall accumulate the annual income of such share, *or*, "portion," *or*, "legacy," at compound interest, by investing the same, and the resulting income thereof in any of the investments hereby authorised, in augmentation, and so as to follow the destination of the capital of such share, *or*, "portion," *or*, "legacy."

Maintenance and accumulation clause for children of subsequent tenant for life by reference to trusts for testator's children.

X. And I declare that the several provisions as to maintenance and education of minors, and the accumulation and disposal of surplus income during minorities, hereinbefore contained with reference to the share to which any child of mine shall be entitled in expectancy as aforesd, shall, after the determination or failure of the trusts hereinbefore declared, which are prior to the trust hereinbefore declared for the child or children of the sd ——, extend and be applicable to the income of the share to which any child of the sd —— shall for the time being be entitled in expectancy, under the trusts hereinbefore declared, with such alterations as may be necessary to adapt such provisions to that case.

Advancement clause for children of subsequent tenant for life by reference to trusts for testator's children.

XI. And I declare that, without prejudice to the trusts herein contained in priority to the trusts for the sd A., *tenant for life in remainder*, [and the sd B., *wife of A.*,] my trustees shall, after the death of the sd A., or during his lifetime with his consent in writing, [after the death of the sd A. and B., or during their, his, or her, lifetime, with their, his, or her consent in writing,] have the like power of advancement in favour of the child or children of the sd A. as is hereinbefore contained with reference to the expectant, presumptive, or vested share of any child of mine, with such alterations as the case may require.

Short form of management and mainte-

XII. And I declare that [after the death [or future marriage] of my sd wife, *or*, "of the sd ——," and] during the minority [and spinsterhood] of the sd —— my trustees

nance clause for real or leasehold property. Variations for a mixed fund of realty and personalty (*b*).

shall take and retain possession or receive the rents and profits of the sd hereditaments and premises, and manage the same, with the same powers in that behalf, as if they were absolutely entitled thereto, and shall, after paying all outgoings and expenses, apply at their discretion the whole or any part of the net rents and profits of the sd premises for or towards the maintenance, education, or benefit of the sd ——, with power to pay the same to his [her] guardian or guardians for that purpose without seeing to the application thereof; and shall accumulate the surplus thereof during the minority [and spinsterhood] of the sd —— by investing the same and the resulting income thereof in any of the investments hereinafter authorised for [my residuary estate, *or as the case may be*,] for the benefit of the sd ——, but with power to apply such accumulations for his [her] maintenance, education, or benefit in any subsequent year.

The same for real or leasehold property devised to children as tenants in common.

XIII. AND I DECLARE that, [after the death [or future marriage] of my sd wife, *or*, "of the sd ——," and] during the minority of any son [or grandson], or the minority and spinsterhood of any daughter [or granddaughter] of mine, [of the sd ——,] my trustees shall take and retain possession, or receive the rents and profits of the share in the sd hereditaments and premises to which such minor shall be [expectantly] entitled, and manage the same, with the same powers in that behalf as if they were absolutely entitled thereto, and shall, after paying all outgoings and expenses,

(*b*) For a mixed fund of realty and personalty, make the following alterations: — in line 2, for "hereditaments and premises," say, "real and leasehold premises hereinbefore devised and bequeathed to my trustees as aforesd":—in line 6, say, "net rents and profits of the sd real and leasehold premises, and of the income of the personal estate other than leaseholds hereinbefore bequeathed to my trustees in trust as aforesd":—in line 10, say, "surplus of the sd rents, profits, and income":—in line 13, "authorised for the proceeds of any sale under the power hereinafter contained."

apply at their discretion the whole or any part of the net rents and profits of such share for or towards the maintenance, education, or benefit of such minor, with power to pay the same to his or her guardian or guardians for that purpose, without seeing to the application thereof; and shall accumulate the surplus thereof during the minority, or minority and spinsterhood of such minor, by investing the same and the resulting income thereof in any investments hereinafter authorised for [my residuary estate, *or as the case may be*], as an addition to, and so as to devolve with the share of such minor, but with power to apply such accumulations for his or her maintenance, education, or benefit in any subsequent year.

Maintenance clause for a mixed fund of real and personal property held in trust for children as tenants in common.

XIV. AND I DECLARE that [after the death [or future marriage] of my sd wife, *or*, "of the sd ——," and] during the minority of any son [or grandson] or the minority and spinsterhood of any daughter [or granddaughter] of mine, [of the sd ——], my trustees may apply at their discretion the whole or any part of the net rents, profits, and income of the [expectant] share of such minor, in the sd real and personal estate and premises hereinbefore devised and bequeathed to my trustees in trust as aforesd, after payment of all outgoings and expenses, for or towards the maintenance, education, or benefit of such minor, with power to pay the same to his or her guardian or guardians for that purpose, without seeing to the application thereof; and shall accumulate the surplus of such net rents, profits, and income during the minority, or minority and spinsterhood, of such minor, by investing the same and the resulting income thereof in any investments hereinafter authorised for the proceeds of any sale under the power hereinafter contained as an addition to and so as to devolve with the [expectant] share of such minor in the sd personal estate, but with power to apply such accumulations for his or her maintenance, education, or benefit in any subsequent year.

Power of advance-

XV. I AUTHORISE my trustees at any time [after the death [or future marriage] of my said wife, *or*, "of the sd ——,"

ment for real or leasehold property. Variations for a mixed fund, and other circumstances(c).

or previously thereto with her [his] consent in writing] to raise by sale, mortgage, or otherwise, any part or parts not exceeding in the whole the sum of £——, *or*, "not exceeding in the whole a moiety of the value (to be determined for that purpose in such manner as my trustees shall in their discretion think fit,)" of [the then expectant presumptive or vested share of any child [or grandchild] of mine [of the sd ——] in] the sd real and leasehold premises, [*or, if a mixed fund*, the sd real and personal estate] under the trusts aforesd, and to pay or apply the same for his or her advancement or benefit as my trustees shall think fit [*add, if thought expedient*, Provided always and I declare that no purchaser or mortgagee shall be concerned to enquire as to the propriety of raising any money for the purpose of such advancement, or the amount which ought to be raised or to see to the application thereof.]

Special maintenance. Authority to keep up a house for infants.

XVI. *To follow the usual maintenance clause:* AND IN PARTICULAR may, if they shall think fit, apply all or any part of the income applicable under the present power for the maintenance or education of my infant child or children for the time being, in or towards providing a suitable residence, and keeping up an establishment for such child or children, or any of them, and for that purpose may take on lease or from year to year any proper dwellinghouse, and defray all expenses connected therewith, or with the establishment to be kept up therein, and may also, if they shall think fit, permit any adult child or children of mine to share the benefit of such residence and establishment either with or without contributing towards the expenses thereof, and upon such terms as to the contribution, if any, to be made by such adult child or children, and in all other respects as my trustees may in their discretion think fit.

(c) This form, with the appropriate variations, is adapted to go either with form XII., XIII., or XIV.

POWERS TO TRUSTEES. (*d*)

Power to manage real and leasehold estate until sale. Full form.

1. AND I DECLARE that until all the real and leasehold estate hereinbefore devised and bequeathed to my trustees in trust for conversion shall be sold, it shall be lawful for my trustees to manage or superintend the management of the same premises or the unsold part thereof for the time being (*a*), including power to cut timber and underwood for sale, repairs, or otherwise, to open and work mines, minerals, quarries, and brickfields, and to erect, pull down, and repair houses and other buildings, and to drain and make roads and fences, and otherwise to improve all or any of the sd premises, and to insure houses and buildings against loss or damage by fire, and to make allowances to and arrangements with tenants and others, and to accept surrenders of leases and tenancies, and generally to deal with the property as if they were absolute owners thereof without being responsible for any loss or damage that may happen thereby; AND ALSO power to delegate, either expressly or by implication during such period or periods, and upon such terms as they shall think fit, the exercise of all or any of the powers of management and improvement hereinbefore contained to the person or persons for the time being entitled to the enjoyment of the rents and profits of the sd trust premises [or of any part thereof] if of full age, or to any other person or persons interested therein under this my will, without being responsible for any loss occasioned thereby; AND ALSO power conclusively to determine either by way of anticipation or otherwise, and either expressly or by implication what part, if any, of the produce of timber, mines, minerals, quarries, or brickfields shall be applied as capital, and what part, if any,

(*d*) See also CONVERSION AND INVESTMENT, above, pp. 1271, *et seqq.*

(*a*) If there is no trust for conversion say, "AND I DECLARE that it shall be lawful for my trustees to manage or superintend the management of my real and leasehold estate hereinbefore devised and bequeathed in trust, including, &c."

as income, and so that such part as shall be determined to be capital shall be disposed of as if the same had arisen from a sale under the trust for sale hereinbefore contained (*b*); And also power to raise and pay the costs and expenses attending the exercise of the sd powers of management and improvement out of the income, or as to any part not exceeding two-third parts of the sums, if any, expended in improvements which my trustees shall consider to be of a permanent nature, by mortgage of the sd premises, or any part thereof, or by sale thereof or of any part thereof under the trust for sale hereinbefore contained (*b*), or otherwise out of the capital of the sd trust premises.

The same. Short form.

II. And I empower my trustees to manage and cultivate my real and leasehold hereditaments hereinbefore devised and bequeathed in trust [for sale until the same shall be sold (*c*)], and cut timber and underwood for sale, repairs, or otherwise, and to repair and insure houses and buildings, and to make allowances to and arrangements with tenants and others, and to accept surrenders of leases and tenancies.

Power to grant leases of unsold lands. (*d*)

III. And I declare that it shall be lawful for my trustees to demise all or any of my real and leasehold hereditaments and premises hereinbefore devised and bequeathed in trust [for sale, and which shall for the time being remain unsold (*c*)], for any term of years not exceeding twenty-one years, [or for a mining lease not exceeding forty years, or for a building or improving lease not exceeding ninety-nine years,] to take effect in possession or within six calendar months from the date of the demise (*e*) at the best rent that

(*b*) If there is no trust for conversion say, "under the power of sale hereinafter contained."

(*c*) If there is no trust for sale omit the words in brackets.

(*d*) See p. 1072, note (*b*), and p. 1073, note (*d*). The addition to the trust for sale and powers of leasing where an undivided share or reversionary interest is included in the devise can be readily adapted from forms XLVIII. and XLIX., pp. 1073–74.

(*e*) Where a simple power to grant ordinary rack rent leases is sufficient the power may be shortened by substituting, "at rack rent," for the rest of the form.

can reasonably be obtained without taking a fine or premium, but so that in case any lease shall be granted on the surrender or determination of a then existing or prior lease or tenancy, the value of the interest so surrendered, or the tenant right or claim to compensation for improvements or otherwise in respect of such tenancy, may be taken into account in fixing the rent and terms of the new lease.

The same. Short unrestricted form. (*f*)

IV. And I empower my trustees to demise all or any part of my real and leasehold hereditaments [which shall for the time being remain unsold (*c*)] for any term of years either in possession or reversion, and for any purpose, with or without taking a fine or premium, and upon such terms and conditions in all respects as they shall think fit, but so that any sum received as a fine or premium shall be applied as if the same were proceeds of a sale under the trust for sale hereinbefore contained (*b*), and so that, &c., *provision as to surrendered leases, &c., as in last form.*

Power to invest in the purchase of land.

V. And I declare that it shall be lawful for my trustees, at the request in writing of the person or persons of full age, if any, for the time being entitled to the income of the sd trust premises, [and if there shall be no such person at the discretion of my trustees,] to invest any moneys arising from the sale or conversion (which my trustees are hereby authorised to make for such purpose) of the sd trust premises, or any part thereof, in the purchase of any manors, messuages, lands, or hereditaments in England or Wales, [or Ireland,] of freehold, copyhold, or customary tenure, or held for any term of years of which not less than [sixty] years shall be unexpired at the time of such purchase, or in the enfranchisement of any copyhold or customaryhold hereditaments purchased under the present power: And that all such hereditaments shall be assured to my trustees, their heirs, exors, admors, and assigns, according to the tenure

(*f*) For powers to grant building and mining leases, which may be adapted with merely verbal alterations to a will, see pp. 1175 and 1176. For a power given by reference to the Leases and Sales of Settled Estates Act, see p. 1203.

thereof (*a*) upon trust that my trustees shall, with the consent in writing of the person or persons for the time being entitled to the income of the sd trust premises, if of full age, and if there shall be no such person, at the discretion of my trustees, sell such hereditaments, either together or in parcels, and either by public auction or private contract, and subject to such conditions as they shall think fit, with power to buy in, or rescind, or vary any contract for sale, and to re-sell, without being responsible for loss occasioned thereby, and for the purposes aforesd, or any of them, to execute and do all such assurances and things as they shall think fit: AND UPON FURTHER TRUST that my trustees shall stand possessed of the net moneys to arise from every such sale after payment of the costs thereof upon the same trusts, and with and subject to the same powers and provisions, including the sd power of purchasing hereditaments, as the money laid out in the purchase of the hereditaments so sold would have been subject to if the same had not been so laid out: AND IN THE MEANTIME, (*b*) and until all the sd purchased hereditaments shall be sold, my trustees shall have power to manage the same premises, and to make allowances to and arrangements with tenants and

(*a*) When the purchase is authorised to be made with the proceeds of real estate comprised in a general devise in trust for conversion, substitute for the rest of this form, "upon the trusts, and with and subject to the powers and provisions upon, with, and subject to which, the same premises would thenceforth be held, if the same had been comprised in the general devise and bequest in trust for conversion hereinbefore contained."

(*b*) If it is probable that land will be actually purchased, it may be proper to insert more detailed powers of management and leasing, see above, forms I., III., and IV. If the will contains a devise of land with powers of management, leasing, &c., the power may be given by reference as follows:— "AND IN THE MEANTIME and until all the sd purchased hereditaments shall be sold, my trustees shall have the like powers of managing, improving, granting leases of, and accepting surrenders of leases and tenancies of the same as are hereinbefore given to them in respect of, &c."

others, and to accept surrenders of leases or tenancies: And to demise all or any part of the same premises for any term of years not exceeding twenty-one years, to take effect in possession or within six calendar months from the date of the demise, at rack rent, but so that in case any lease shall be granted on the surrender of a then existing lease or tenancy, the value of the interest so surrendered may be taken into account in fixing the rent and terms of the new lease: And in the meantime, and until all the sd purchased hereditaments shall be sold, my trustees shall pay and apply the rents and profits thereof to the person or persons for the purposes and in the manner, to whom and for and in which the income of the trust premises applied in the purchase of the sd hereditaments would have been applicable if such purchase had not been made, it being my intention that the sd purchased hereditaments shall be considered as money, and shall be subject in all respects to the same trusts as the money laid out in the purchase thereof would have been subject to if such purchase had not been made.

Power to purchase a house for residence of wife.

VI. PROVIDED ALWAYS, and I empower my trustees at any time, at the request in writing of my sd wife, to lay out any sum not exceeding £—— arising from the sale (which they are hereby authorised to effect) of any part of the sd trust premises in the purchase of a messuage with suitable outbuildings and other appurtenances, and with or without gardens, pleasure grounds, and land to be held therewith, as a residence for her, such messuage and premises to be situate in England or Wales, and to be either freehold or copyhold or leasehold held for a term of years of which not less than [forty] years shall be unexpired at the time of purchase, and to be assured to my trustees, their heirs, exors, admors, or assigns, as the case may require, (*c*) upon trust, during the life of my sd wife with her consent in writing, and afterwards at the discretion of my trustees, to sell such

(*c*) See last page, note (*a*).

hereditaments, either together or in parcels, &c., *as in preceding form:* AND UPON FURTHER TRUST that my trustees shall stand possessed of the net proceeds of such sale after payment of the costs thereof upon the same trusts, and with and subject to the same powers and provisions, including the sd power of purchasing hereditaments, as the money laid out in the purchase of the hereditaments so sold would have been subject to if the same had not been so laid out: AND MY TRUSTEES shall until such sale permit my sd wife to occupy such messuage and premises, but with power to them, with such consent or at such discretion as aforesd, to demise the same or any part thereof for any term not exceeding twenty-one years, to take effect in possession or within six calendar months from the date of the demise, at rack rent, the rent received under any such lease to be paid or applied in the same manner as the income arising from the proceeds of the sale of the sd messuage and premises would be payable or applicable if the same were sold.

Power to purchase furniture for wife.

VII. PROVIDED ALWAYS, and I authorise my trustees at any time, at the request in writing of my sd wife, to lay out any sum not exceeding £—— out of my personal estate in the purchase of furniture, to be held, used, and enjoyed by my wife during her life, she keeping the same insured against fire and in good repair and preservation, reasonable wear and tear excepted, and after her death to fall into my residuary estate. *Inventory, as in form* XXIII. *or* XXIV., p. 1233, *substituting,* "trustees," *for,* "exors," *in form* XXIII.

Power to lay out for building, &c. Short form. (*d*)

VIII. I AUTHORISE my trustees to lay out for building any of the hereditaments hereinbefore devised in trust for sale, and to erect, build, make, and lay down on or under the same any houses, buildings, roads, paths, sewers, drains, gas-pipes, water-pipes, and other conveniences, at the expense of my residuary estate.

Power to

IX. I AUTHORISE my trustees to complete or rescind

(*d*) See the full form in SETTLEMENTS REAL, p. 1178.

any contract for sale or purchase of hereditaments of any tenure which I may have entered into, and which may at my death be uncompleted, and to make, insist upon, waive, or submit to any requisitions or objections as to title or evidence of title or otherwise, whether tenable or not, and either unconditionally or upon terms, and to make any arrangements as to giving or receiving compensation for error or misstatement in the particulars or otherwise, and to accept any title not strictly marketable either with or without receiving an indemnity, and to give an indemnity against defects in title by charge upon, or otherwise out of any part of my estate, and generally to act in all respects in relation to any such sale or purchase, as if they were selling or purchasing as beneficial owners, without being responsible for loss: [And I direct that all purchase-money or compensation payable upon any such purchase, and the costs of and incident to the completion of any such sale or purchase, shall be paid out of my residuary personal estate, and that the hereditaments so purchased shall be included in the general devise of my real estate hereinbefore contained, and the proceeds of any such sale shall be deemed part of my general personal estate].

complete contracts for sale or purchase of land.

x. And I declare that it shall be lawful for my trustees to raise on mortgage (*a*) of any hereditaments for the time being vested in them on the trusts hereinbefore declared concerning my residuary estate, any principal moneys which may be required for the payment of my funeral and testamentary expenses, debts, or legacies, or for any of the purposes of this my will (but so that no mortgagee advancing money on a mortgage purporting to be made under this present power shall be concerned to see that such money is wanted, or that no more than is wanted is raised), and to secure the repayment of any moneys so raised as aforesd, with interest at such rate as may be

Power to raise money on mortgage.

(*a*) The trustees can give a mortgage with power of sale; see *Re Chawner's Will*, L. R. 8 Eq. 569. As to a mortgage to a Building Society, see *Cruikshank* v. *Duffin*, L. R. 13 Eq. 555.

thought proper, by mortgage in fee simple, or for any term of years, of the hereditaments to be charged therewith, and either with or without a power of sale, and with such other powers and provisions and upon such terms in all respects as my trustees may think fit.

Power to employ agents, &c.

XI. And I authorise my trustees to employ any agents, collectors, clerks, accountants, or managers, for the purpose of getting in rents or debts, or managing, or keeping or making up the accounts of my estate, or otherwise in relation to the execution of the trusts of my will, at such remuneration, either by way of poundage or salary or otherwise, as they shall think fit.

Special power to sell and lease reversions.

XII. Provided always, and I authorise my trustees to sell [or lease] any reversionary property, whether real or personal, forming part of my estate, before the same shall fall into possession, with the concurrence of the person or persons entitled to or having power in that behalf in relation to the prior interests, so as to effect a sale in possession [or a lease to take effect in possession, or within six calendar months from the date thereof], and so that, in case of any sale being made under this present power, my trustees shall, with the like concurrence, invest the net proceeds of such sale in their names [or under their legal control], in or upon any of the investments hereinbefore authorised; and may, with such concurrence, from time to time vary such investments: And shall, during the existence of any such prior interest or interests, pay the income of the sd proceeds of sale, and of the investments representing the same to the person or persons entitled thereto: And after the determination of such prior interest or interests, shall hold the sd proceeds of sale, and investments upon the trusts, and with and subject to the powers and provisions upon which the same would be held if such sale had been made under the trusts hereinbefore contained: Provided always, that nothing herein contained shall affect the right of my trustees to sell any reversionary interest before it falls into possession, without

any such concurrence as aforesd, if in their opinion an earlier sale would be beneficial.

Power of partition over realty and personalty.

XIII. I AUTHORISE my trustees to concur with the other person or persons entitled to or having power in that behalf in relation to any property, whether real or personal, held in undivided shares, in making a partition of such property, [and that notwithstanding that any of my trustees or a sole trustee may be entitled to or interested in any of the other shares of the same, (*b*)] and to give or receive money for equality of partition, and to make any such partition upon such terms and conditions as they shall think proper, and for the purposes aforesd to execute and do all such assurances and things as they shall think fit; And the property which shall on any such partition be taken by my trustees in severalty, shall be held upon, with, and subject to the like trusts, powers, and provisions (so far as applicable) as the undivided share or shares for which the same shall be substituted, and any sum agreed to be paid for equality of partition may be paid out of my residuary personal estate, or raised by mortgage of or charge upon the property so taken in severalty, and any moneys received for equality of partition shall be applied as if the same had arisen from a sale of the sd undivided share or shares.

Power to appoint agents to get in or manage property abroad.

XIV. I AUTHORISE my trustees to appoint any persons or person to act as their attorneys or attorney, or agents or agent, for the purpose of selling, converting, collecting, calling in, and executing and perfecting assurances of, or managing or cultivating any of my property, real or personal, which may be abroad, or executing any of the trusts of my will in relation to any such property, without being responsible for loss.

Power of investment.

XV. I AUTHORISE my trustees to invest any moneys forming part of the trust estate under this my will which may at any time be in their hands and requiring investment, in their names [or under their legal control], in or upon, &c.,

(*b*) See above, p. 1075, note (*f*).

investments and power to vary, see "SETTLEMENTS PERSONAL," p. 1049, *form* IV., V., *or* VI.

Power to trustees to sell house and furniture bequeathed to wife for life.

XVI. I AUTHORISE my trustees, during the life of my wife with her consent in writing, to sell all or any part of the sd messuages and hereditaments, furniture, plate, and household effects hereinbefore devised and bequeathed in trust for her for life, either together or in parcels, and either by public auction or private contract, and subject to such conditions as they shall think fit, with power to buy in, rescind, or vary any contract for sale, and to resell without being responsible for loss, and for the purposes aforesd, or any of them, to execute and do all such assurances and things as they shall think fit, [And the net moneys arising from such sale shall sink into and form part of my residuary estate].

Power to trustees to determine questions.

XVII. I AUTHORISE my trustees to determine what articles pass under any specific bequest in this my will, or any codicil hereto, and whether any moneys are to be considered as capital or income, and how valuations are to be made, or value determined, for the purpose of any case of [hotchpot, or satisfaction, or] allotment, or appropriation, or otherwise, and to apportion blended trust funds, and to determine all questions and matters of doubt arising in the execution of the trusts of this my will, or any codicil hereto: AND I declare that every such determination, whether made upon a question actually raised or implied in the acts or proceedings of my trustees, shall be conclusive and binding on all persons interested.

MISCELLANEOUS CLAUSES.

Condition not to oppose probate.

I. I DECLARE that if any person shall [without the consent in writing of my exors, which it shall be in their uncontrolled discretion to give or refuse (*c*),] dispute the validity

(*c*) The words in this bracket should be inserted, otherwise it may be difficult to resist the probate of a forged codicil.

of, or refuse to confirm this my will, or any codicil hereto, such person shall forfeit all benefits hereby, or by any codicil hereto given to him or her, and the same not being residuary or a share of residue shall fall into my residuary estate, or being residuary or a share of residue shall go to the other persons or person entitled to such residue as if the person incurring such forfeiture had not been included in the residuary gift.

Clause binding legatees to abide by construction of counsel.

II. I DECLARE that in case any question or dispute shall arise as to the construction of my will, or any codicil hereto, my exors or trustees may cause a proper case to be laid before two or more counsel for the determination of the same, and their determination shall be final and binding on all persons, and that notwithstanding the pendency of any action or other proceedings in which such question or dispute could properly be determined; And I declare that every person claiming under my will or any codicil hereto, upon the request in writing of my exors or trustees, shall execute and do, at the expense of my estate, all such instruments, acts, and things as may be proper for carrying such determination into effect; and in the event of the wilful neglect or refusal of any such person to do so upon such request as aforesd, or if any such person shall institute or procure any other person to institute any action or other legal proceedings for determining any such question or dispute as aforesd, then I declare that he or she shall forfeit all benefits, &c., *as in last form.*

Clause putting children to election to condone breaches of trust by trustees of testator's marriage settlement.

III. *Recite breach of trust committed by trustees of testator's marriage settlement:* NOW I HEREBY declare that all the dispositions hereby made in favour of my children [and grandchildren] respectively [or their respective representatives] are so made on condition that my sd children [and grandchildren] respectively [and their respective representatives] shall adopt and confirm all the acts and proceedings of the trustees or trustee of my sd marriage settlement in the exercise of the trusts thereof up to the time of my decease, and

especially, *refer to recited breach of trust*, and shall, upon the request in writing and to the satisfaction of my exors or trustees, and within such time as they shall appoint, at the cost of my residuary estate, execute and do all such instruments and acts as may be by them required in that behalf, and for indemnifying and releasing all and every the trustees and trustee of the sd settlement and their respective estates and effects in respect of all such acts and proceedings; And I declare that if any child [or grandchild] of mine, or his or her representatives, shall refuse or neglect to comply with the request in writing of my exors or trustees in that behalf, then my will shall be construed, and the rights of all persons claiming thereunder shall be determined in all respects as if every child [or grandchild] who [or whose representatives] shall so refuse or neglect had died before me without leaving issue.

Precatory trust.

IV. I REQUEST the sd ——, but not so as to impose any legal obligation on him, or to create any trust or equity in favour of any other person, to, &c., *e.g.*, "to carry out my wishes expressed in a letter addressed to the sd, *legatee*, and deposited with this my will, which letter I expressly declare not to be testamentary, and that whether the contents or existence thereof shall or shall not be communicated to the sd, *legatee*, during my lifetime."

Trust for accumulation.

V. And I declare that my trustees shall during the term of twenty-one years, to be calculated from my death [in case my sd wife shall so long live,] out of the annual income of the sd trust premises yearly and every year raise the sum of £—— [(*d*) and shall accumulate the same at compound interest by investing the same and the resulting income thereof in any investments hereby authorised for the sd

(*d*) If the sums are not to be accumulated at compound interest, in lieu of the part bracketed, say, "and shall hold and apply the sums so raised and the investments thereof as part of the capital of the sd trust premises."

trust premises, with power from time to time to vary such investments at discretion until the termination of the sd period of accumulation, and shall then hold and apply the accumulated fund as part of the capital of the sd trust premises].

DEVISES IN STRICT SETTLEMENT (*a*).

I. To SUCH USES (*b*), upon such trusts [*or*, To THE USE of, or (*b*) in trust for such persons or person, for such estates or estate, interests or interest], and subject to such powers and provisions as —— shall from time to time by any deed or deeds, revocable or irrevocable, or by will or codicil, appoint, AND IN DEFAULT of and subject to any such appointment, &c. General power of appointment.

II. To SUCH USES, &c., *as above*, as —— and —— shall from time to time by any deed or deeds, revocable or irrevocable, jointly appoint, AND IN DEFAULT of and subject to any such appointment, &c. The same to two persons jointly (*c*).

III. To SUCH USES, &c., *as above, form* I., as —— the wife of —— shall while discovert by deed, revocable or irrevocable, or, whether covert or discovert, by will or codicil, appoint, AND IN DEFAULT of and subject to any such appointment, &c. The same to married woman restricted. (*d*)

IV. To THE USE of the sd, *trustees*, their exors, admors, Limitation of a term.

(*a*) Most of the clauses in SETTLEMENTS REAL can be readily adapted to wills, with the necessary modifications in the commencement of the clauses and a few other obvious alterations. See also SPECIFIC DEVISES.

(*b*) If the legal estate is in the trustees, omit the words "To SUCH USES," or "To THE USE OF, or."

(*c*) For a power to two persons or the survivor, see above, p. 1146, form I.

(*d*) The object of this form, of course, is to preclude a binding appointment being made in favour of a husband.

and assigns, for the term of —— years, to commence from [my death], [without impeachment of waste,] upon the trusts, and with and subject to the powers and provisions hereinafter declared and contained concerning the same, and from and after the determination of the sd term, and in the meantime subject thereto and to the trusts thereof, To THE USE, &c.

Limitation of a life estate.

v. To THE USE of —— and his assigns during his life [without impeachment of waste (*e*)], with remainder To THE USE, &c.

The same when the legal estate is in trustees.

vi. In TRUST for —— and his assigns during his life [and to permit him and them to have all the rights, powers, and privileges of a legal tenant for life without impeachment of waste (*e*)], with remainder In TRUST, &c.

Limitation to trustees during life of a woman for her separate use.

vii. To THE USE of the sd, *trustees*, and their heirs, during the life of the sd, *woman*, Upon TRUST to pay the rents and profits of the sd hereditaments and premises to her, or to permit or empower her to receive the same, for her sole and separate use, independently of her sd present, or any future [*or*, any] husband, and of his debts, control, and engagements [and to permit her, whether covert or sole, to manage the sd premises, and to have and enjoy all the rights, powers, and privileges of a legal tenant for life thereof [without impeachment of waste (*e*)], And upon TRUST to do all such acts as may be necessary, or as she may require for the purposes aforesd], [but so nevertheless that during coverture she shall not have power to dispose of the rents and profits of the sd premises by way of anticipation], and from and after her death To THE USE, &c.

Life interest determinable on bankruptcy, &c. Variations where it is protected. (*f*)

viii. To THE USE of, *trustees*, and their heirs, during the life of K. of, &c. [without impeachment of waste (*e*)], Upon TRUST, that if at the time of my death [*or, if the life estate is in remainder*, at the time of this present limitation taking effect in possession] the sd K. would not, by reason of any

(*e*) See p. 1146, note (*b*).

(*f*) If it is desired to give a legal estate to the tenant for life, the proviso determining it on his bankruptcy, &c., p. 1210, note, can be readily adapted.

antecedent bankruptcy or alienation or charge, or attempted alienation or charge, or the happening of any other event, [whether before or after my decease,] be wholly or partially prevented from personally enjoying the life interest hereby given to him in the sd hereditaments and premises, if the same were given to him absolutely, then my sd trustees shall allow the sd K. to enter into and remain in the possession, or the receipt of the rents and profits, of the sd premises [including the produce of timber cut in a due and proper course of management, and of mines, minerals, quarries, and brick-fields], during his life, or until he shall become bankrupt, or alienate or charge, or attempt to alienate or charge, his sd life interest in the sd premises, or some part thereof, or until some other event shall happen whereby, if such life interest were given to him absolutely, he would be wholly or partially deprived of the personal enjoyment thereof, and shall, after the failure or determination, during the life of the sd K., of the trust hereinbefore declared in his favour, but without prejudice to the future exercise of the powers hereby given to him as equitable tenant for life [other than and except, *specify any power to be excepted*], take possession, or enter into the receipt, &c., *continue as at* p. 1211, *note, with verbal alterations.*

Limitation of rent-charge. (*f*)

IX. To THE USE that ——, and his [her] assigns, shall during his [her] life [widowhood] receive a yearly rent-charge of £——, commencing from my death, to be charged upon and issuing out of all the sd hereditaments and premises hereinbefore devised, and to be considered as accruing from day to day, but to be payable quarterly, and the first of such

(*f*) Where the rent-charge is limited to widow of tenant for life, say, "To THE USE that ——, the wife of the sd ——, &c," the first payment to be made "at the expiration of three calendar months after the death of the sd ——." For variations where the rent-charge is limited to trustees for the separate use of a woman, and where the legal estate is in the trustees, see SETTLEMENTS, p. 1148, forms VII. and VIII. The powers of distress and entry will be the same as those in SETTLEMENTS, p. 1149, forms X. and XI.

payments to be made at the expiration of three calendar months after my death.

Limitation to sons or daughters of tenant for life successively in tail male or tail general.

x. To the use of (*g*) the first and every other son [daughter] of the sd —— successively in remainder, one after the other, according to their respective seniorities in tail [male], (*a*) With remainder, &c.

Proviso cutting down estates in tail male by purchase of persons born in testator's lifetime. Variations for tenants in tail general.

xi. Provided always, and I declare, that if any person, to whom an estate in tail [male] by purchase in the sd premises hereinbefore devised is hereinbefore limited, is born in my lifetime, such estate in tail [male] shall not take effect: And in lieu thereof I devise the sd premises To the use of such person, and his or her assigns, during his or her life [without impeachment of waste], with remainder To the use of the first and every other son of such person, &c., *in tail male, form* x. [*or, in tail, form* x., *with remainder to the use of daughters in tail, form* x.]: But I declare that a person begotten but not actually born at the time of my death shall not be considered as born in my lifetime for the purpose of the provision lastly hereinbefore contained.

The same where estates in tail male and in tail general are limited to the same persons.

xii. Provided always, and I declare, that if any person to whom estates in tail male and also in tail general by purchase in the sd premises hereinbefore devised are hereinbefore limited, is born in my lifetime, such respective estates shall not take effect: And in lieu of such estate in tail male, I devise the sd premises To the use of such person, and his or her assigns, during his or her life [without impeachment of waste], with remainder To the use of the first and every other son of such person, &c., *in tail male, form* x.: And in lieu of such estate in tail general, I devise the sd premises To the use of the

(*g*) If the legal estate is in the trustees, say in this and the following forms of limitations, instead of "To the use of," "In trust for."

(*a*) This limitation would include any child dying in the testator's lifetime leaving issue inheritable under the entail, the gift being saved from lapse by the 32nd section of the Wills Act, whether the child is a descendant of the testator, or not.

first and every other son of such person successively, &c., *in tail general, form* x., with remainder To THE USE of the first and every other daughter of such person successively, &c., *in tail male, form* x., with remainder, *to daughters successively in tail general, form* x.: *Add proviso at end of last form.*

Limitation to daughters of tenant for life as tenants in common in tail general, or tail male, with cross remainders.

XIII. To THE USE of all the daughters of the sd —— [including any daughter who shall have died in my lifetime (*b*)], in equal shares as tenants in common in tail [male]: AND IF and so often as there shall be a failure of issue [male] of any such daughter, then as well as to her original share as to any share or shares which shall have accrued to her or her issue [male] by virtue of this present limitation, To THE USE of the others or other of such daughters in equal shares as tenants in common in tail [male]: AND IF there shall be a failure of issue [male] of all such daughters but one, or if there shall be only one such daughter, then as to the entirety of the same premises, To THE USE of such one or only daughter in tail [male], WITH REMAINDER, &c.

Proviso that limitation to daughters as tenants in common in tail shall include daughter dying in testator's lifetime.

XIV. PROVIDED ALWAYS, and I declare, that if any daughter of the sd —— shall have died in my lifetime, and any of her issue [male] shall survive me, she shall be included in the devise hereinbefore contained to the daughters of the sd —— in the same manner as if she had died immediately after me.

Limitations in tail general by reference to limitations in tail male.

XV. To THE USE that all and every the persons or person, to whom estates in tail male by purchase are hereinbefore limited, may severally and successively take estates in tail general in remainder one after the other in the same order and priority in which they respectively take estates in tail male, WITH REMAINDER, &c.

(*b*) The words in this bracket must be inserted, if it is desired to guard against the possible exclusion of a daughter dying in the testator's life-time leaving issue, the gift being to a class. See above, p. 1288, note (*c*), and last page, note (*a*). The same object may, if preferred, be effected by a separate clause, as in the next form.

Limitations in remainder by reference.

XVI. With remainder to the use of every son and daughter born in my lifetime of the sd ——, and the issue of each such son and daughter, for the same estates and in the same order and manner as the sd premises are hereinbefore limited to every son and daughter of mine, and his and her respective issue, with remainder To the use of every son and daughter born after my death of the sd ——, and the issue of each such son and daughter, for the same estates and in the same order and manner as the sd premises are hereinbefore limited to the use of every son and daughter born after my death of every son and daughter of mine, with remainder To the use of —— and his issue for the same estates and in the same order and manner as the sd premises are hereinbefore limited to the sd —— and his issue, with remainder, &c.

Limitations in strict settlement to testator's sons and their issue male.

XVII. To the use of my eldest son, A., during his life, with remainder To the use of his first and every other son actually born in my lifetime, severally and successively according to seniority during their respective lives, with an immediate remainder after the death of each such grandson of mine To the use of his first and every other son, severally and successively, according to seniority in tail male, with remainder after the decease of all the sons of the sd A. born in my lifetime and the default or failure of such issue male as aforesd of all such sons To the use of the sons of the sd A. born after my death, severally and successively, according to seniority in tail male, with remainder To the use that my sons B., C., and D., and every son of mine hereafter born, and their respective sons and grandsons, shall take estates similar to and with the same order and priority as those hereinbefore limited to the use of the sd A., his sons and grandsons, But so that the elder of such sons of mine and his sons and grandsons shall always be preferred to the younger of such sons of mine, and his sons and grandsons, in the same manner as if the uses hereinbefore limited to or in favour of the sd A., his sons and grandsons, were repeated with the substitution of the name

of each of my sd sons in succession, according to seniority, for the name of the sd A., WITH REMAINDER, &c.

XVIII. TO THE USE that all my daughters and their respective sons [and grandsons] shall take estates similar to and with the same order and priority as those hereinbefore limited to the use of my sd son A., his sons [and grandsons], BUT so that the elder of such daughters of mine and her sons [and grandsons] shall always be preferred to the younger of such daughters of mine, and her sons [and grandsons], in the same manner in all respects as if the uses hereinbefore limited to or in favour of the sd A., his sons and grandsons, were repeated, with the necessary verbal alterations and the substitution of the name of each of my daughters in succession according to seniority, for the name of the sd A., WITH REMAINDER, &c.

Limitations to testator's daughters and their issue male, in remainder immediately after limitations to the sons and their issue male.

XIX. TO THE USE that each of my great grandsons (grandsons of the sd A.) to whom estates in tail male are hereinbefore limited, shall take an estate in tail general in the same order and priority as the estate in tail male hereinbefore limited to him, with remainder TO THE USE of all my great granddaughters, (daughters of the sons born in my lifetime of the sd A.,) severally and successively, in remainder one after the other in tail male, so that the daughters of an elder son of the sd A. shall always be preferred to the daughters of a younger son of the sd A., and shall, as between themselves, take in order of seniority, with remainder TO THE

Limitations in remainder to the issue general of testator's sons where there are previous limitations exhausting the testator's male issue (*c*).

(*c*) In the form in the text, males are preferred to females, and females claiming through males of a more remote generation are preferred to those claiming through males of a nearer generation. Sometimes the testator's daughters and their male issue are preferred to the female issue of the testator's sons; in other words, males are preferred to females, and females claiming through males of a nearer generation are preferred to those claiming through males of a more remote generation. In this latter case, for consistency, the form in the text should be altered, so as to make the estates in tail male of the females precede the estates in tail general of the males of the same generation. But it is believed that in practice this nicety is seldom attended to; and it is apprehended that, in the absence of special instructions, the form in the text may be used, although the limitations to the daughters of the testator, and their male issue (form XVIII.), immediately follow the limitations to his sons and their male issue (form XVII.).

USE that each of my sd great granddaughters (daughters of the sons born in my lifetime of the sd A.) shall take an estate in tail general in the same order and priority as the estate in tail male hereinbefore limited to her, with remainder To THE USE of the first and other daughters of the sd A. born in my lifetime, severally and successively one after the other, according to seniority, during their respective lives, with an immediate remainder after the death of each such granddaughter of mine To THE USE of her first and every other son severally and successively in remainder one after the other according to seniority in tail male, with remainder after the death of all such daughters of the sd A. and the default or failure of their issue male, To THE USE of all my great grandsons, (sons of the daughters born in my lifetime of the sd A.), severally and successively, in remainder one after the other in tail general, so that the sons of an elder daughter of the sd A. shall be preferred to the sons of a younger daughter of the sd A., and shall, as between themselves, take in order of seniority, with remainder To THE USE of all my great granddaughters, daughters of the daughters born in my lifetime of the sd A., severally and successively in remainder one after the other in tail male, so that the daughters of an elder daughter of the sd A. shall be preferred to the daughters of a younger daughter of the sd A., and shall, as between themselves, take in order of seniority, with remainder To THE USE that each of my great granddaughters, daughters of daughters born in my lifetime of the sd A., shall take an estate in tail general in the same order and priority as the estate in tail male hereinbefore limited to her, with remainder To THE USE of the sons of the sd A. born after my death, severally and successively, in remainder one after the other according to seniority in tail general, with remainder To THE USE of the daughters of the sd A. born after my death, severally and successively in remainder one after the other according to seniority in tail male, with remainder To THE USE of the daughters of the sd A. born after my death, severally and successively in re-

mainder one after the other according to seniority in tail general, with remainder To THE USE that the sons, grandsons, daughters and granddaughters of the sd B., C., and D., and of every son of mine hereafter born, shall take estates similar to and with the same order and priority as those hereinbefore limited to the use of the sons, grandsons, daughters and granddaughters of the sd A. in remainder after the default or failure of issue male of all my sons [(*d*) and daughters], BUT so that the sons, grandsons, daughters and granddaughters of an elder son of mine shall always be preferred to the sons, grandsons, daughters and granddaughters of a younger son of mine, in the same manner as if the uses hereinbefore limited to or in favour of the sons, grandsons, daughters, and granddaughters of the sd A. in remainder as aforesd were repeated, with the substitution of each of my sons in succession according to seniority, for the sd A., WITH REMAINDER, &c.

Limitation to testator's daughters, and their issue by reference to the limitations to his sons and their issue. (*e*)

XX. To THE USE that all my daughters and their respective issue shall take estates similar to, and with the same order and priority as those hereinbefore limited to the use of my sons and their respective issue in the same manner in all respects as if the uses hereinbefore limited to or in favour of my sons and their respective issue were repeated, with the necessary verbal alterations and the substitution of each of my daughters in succession according to seniority, for my sons respectively, WITH REMAINDER, &c.

Successive limitations in fee by way of executory devise.

XXI. To THE USE of my eldest son who shall survive me (*f*), his heirs and assigns, and in case he shall die under the age of twenty-one years To THE USE of my other sons who shall survive me, successively by way of executory

(*d*) The words in brackets will be inserted if the limitations to the testator's daughters and their issue male, form XVIII., precede the limitations in remainder to the issue general of the testator's sons.

(*e*) This form is intended to follow forms XVII. and XIX. If form XVIII. is inserted, form XX. will require alteration, see Precedent XXII.

(*f*) If it is desired to provide for a son dying in the testator's lifetime leaving issue, this form cannot conveniently be used.

limitation according to their respective seniorities and their respective heirs and assigns, and so that if any such son shall die under the age of twenty-one years his estate shall be divested and go to my next son, but, if I shall leave no son surviving me who attains the age of twenty-one years, then To THE USE, &c.

Limitation to issue of tenant for life, as he shall appoint. Short form (*g*).

XXII. To THE USE of all or any of the children [or remoter issue] of the sd ——, and, if more than one, in such shares and manner as the sd —— shall by deed revocable or irrevocable, or by will or codicil, appoint, AND IN DEFAULT of and subject to any such appointment, To THE USE, &c.

Trusts of term to raise annuity. Variation where the annuity is for the separate use of a woman.

XXIII. AND I DECLARE that the sd hereditaments and premises are hereby devised to the sd, *trustees*, their exors, admors, and assigns, for the sd term of —— years, UPON TRUST that the sd, *trustees*, or the survivor of them, or the exors or admors of such survivor, shall, during the life of the sd ——, by and out of the rents and profits of the sd premises or by the sale of timber or minerals or by mortgage of the sd premises, or any of them, for all or any part of the sd term, or by all or any of the means aforesd, raise the annual sum of £——, commencing from my death, clear of all deductions except succession duty, and shall pay the same to the sd —— [for her separate use, independently of the sd ——, and so that she shall not have power to dispose thereof by way of anticipation], such annual sum to be considered as accruing from day to day, but to be paid by quarterly payments, and the first of such payments to be made at the expiration of three calendar months from my death, if the sd —— shall then be living [and (*h*) shall also retain or pay all such moneys as shall be required to defray and satisfy the costs and expenses incurred in performing any of the trusts of the sd term or otherwise in relation

(*g*) The full form may readily be adapted from SETTLEMENTS REAL, p. 1151, form XIV.

(*h*) The part in this bracket may be omitted, if a general clause, as at p. 1163, form XXIII., is inserted.

thereto, and shall permit the person or persons for the time being entitled in reversion immediately expectant upon the same term to the premises therein comprised to receive the surplus of the rents and profits of the same premises after payment and satisfaction of the annual sum [or sums] and costs and expenses aforesd].

XXIV. AND I HEREBY DECLARE that the sd hereditaments are hereby devised to the sd, *trustees*, &c., *continue as in Settlements Real*, p. 1155, *form* XIX.

Trusts of term for further securing rent-charge or rent-charges previously charged.

XXV. And I declare that the sd premises are hereby devised to the sd, *trustees*, their exors, admors, and assigns, for the sd term of 1000 years upon trust, if I shall have any younger child or children, meaning thereby any child or children who survive me and being a son or sons attain the age of twenty-one years, or being a daughter or daughters attain that age or marry, [or who die in my lifetime leaving issue surviving me,] other than any son or sons of mine who before his or their respectively attaining the age of twenty-one years shall become entitled [or any daughter or daughters who before her or their respectively attaining that age or marrying shall become entitled] in possession under this my will to the sd hereditaments and premises for the first estate for life, then the sd, *trustees*, or the [survivors or] survivor of them or the exors or admors of such survivor (*b*) shall by mortgage of the sd premises or any part thereof for all or any part of the sd term, or by and out of the rents and profits thereof or any part thereof, or by the sale of timber or minerals, or by all or any of the means aforesd, raise the sum of £—— for the portion of each younger child of mine, and pay the same to him or her, or his

Trusts of term for raising portions for testator's children. (*a*)

(*a*) In this form a fixed sum is given to each child. The form at p. 1156, where a sum, either fixed or dependent on the number of the children, is given to the children as tenants in common, can be adapted.

(*b*) In this form and throughout the strict settlement forms the expression, "my trustees," may be used, as in other wills, unless there is more than one set of trustees; but it may be expedient to insert the declaration as to the devolution of the trustees' powers, see below, TRUSTEE CLAUSES.

or her representatives, and upon further trust that the sd trustees or trustee shall by any such means as aforesd raise such annual sum not exceeding £—— as they or he shall think fit for the maintenance, education, or benefit of each child for the time being entitled in expectancy to a portion, and apply the same accordingly, either directly or by paying the same to the guardian or guardians of such child without seeing to the application thereof. And I authorise the sd trustees or trustee to raise, by any such means as aforesd, any sum or sums not exceeding in the whole a moiety of the expectant portion of any child, and to apply the same at their or his discretion for the advancement or benefit of such child, *Advancements by testator in his lifetime to be brought into hotchpot*, p. 1293, *form* XXVII., *mutatis mutandis:* I further authorise the sd trustees or trustee at their or his discretion, when any portion or portions shall be payable, *continue power to raise total sum for portions before they are all payable*, p. 1158. [(*c*) And subject to the trusts aforesd and to the right of the sd trustees or trustee to raise by any of the means aforesd all costs and expenses incurred in the execution of the trusts of the sd term, the rents and profits of the premises comprised in such term, or so much thereof as shall not be required for the purposes aforesd, shall be taken and received by the person or persons entitled to the sd premises in reversion expectant on the same term].

Trusts of term for raising portions for children of another person.

XXVI. AND I HEREBY DECLARE that the same premises are hereby devised to the sd, *trustees*, their exors, admors, and assigns, for the sd term of 1000 years UPON TRUST if there shall be any younger child or children of the sd ——, meaning thereby, &c., *continue as in Settlements Real*, p. 1156, *form* XX., *mutatis mutandis*.

Trusts of term to

XXVII. AND I HEREBY DECLARE that the sd premises are

(*c*) The words in this bracket may be omitted if a general clause, as at p. 1163, No. XXIII. be inserted.

hereby devised to the sd, *trustees*, their exors, admors, and assigns, for the sd term of —— years, UPON TRUST that the sd, *trustees*, or the [survivors or] survivor of them, or the exors or admors of such survivor, shall by mortgage of the sd premises, or any part thereof, for all or any part of the sd term, or by the sale of timber or minerals, or by and out of the rents and profits thereof, or by all or any of such means, raise in aid, and, in case of deficiency of, *or*, "in exoneration of," my personal estate, such sum or sums of money as may be sufficient to discharge my funeral and testamentary expenses and debts and the legacies given by this my will or any codicil thereto, and shall pay and apply such moneys accordingly: AND no mortgagee or other person advancing or paying such moneys, or any part thereof, shall be concerned to inquire [as to the deficiency of my personal estate, or] whether any money is actually wanted for the purposes aforesd: [(*d*) AND FURTHER, that it shall be lawful for the sd trustees or trustee to raise any moneys under the trusts of the sd term before it shall be ascertained whether any and what sum will be wanted, and to apply the same for the purposes aforesd]: AND FURTHER, that if any money shall be raised under the trusts of the sd term which shall not be required for the purposes aforesd, the sd trustees or trustee [(*a*) shall pay the same to the trustees or trustee of the power of sale hereinafter contained, who] shall apply the same as if arising from a sale under the power of sale hereinafter contained, [such power], *add direction as to costs and surplus rents, as in form* XXV., *unless a general clause for that purpose is inserted.* pay debts and legacies.

XXVIII. PROVIDED ALWAYS, and I declare, that it shall be lawful for each [male] person hereby made [legal or equitable] tenant for life of the sd premises, either before or Power to jointure.

(*d*) The clause in this bracket will be omitted if the personalty is to be exonerated.

(*a*) The words in this bracket will be omitted, if the trustees of the term are likewise the trustees of the power of sale.

after he shall become entitled, &c., *continue power to jointure*, p. 1164, *form* XXV. (*c*)

Power to female tenants for life to limit rentcharges to husbands.

XXIX. PROVIDED ALWAYS, and I declare, that it shall be lawful for each female person hereby made [legal or equitable] tenant for life of the sd premises, either before or after, *continue power*, p. 1164, *form* XXVI. (*c*)

Power to charge portions.

XXX. PROVIDED ALWAYS, and I hereby declare, that it shall be lawful for every person hereby made [legal or equitable] tenant for life of the sd premises [*if other provision is made for the younger children of the first tenant for life, say*, " other than the sd, *first tenant for life* "], either before or after, &c., *continue as in* p. 1167, *form* XXVIII., *mutatis mutandis*. (*d*)

Power to trustees to manage during minorities. Short form (*e*).

XXXI. PROVIDED ALWAYS, and I declare, that during the minority and, in the case of a female, spinsterhood of (*f*) any tenant for life or in tail [male or in tail] by purchase in possession of the sd hereditaments and premises, [or any undivided share thereof (*g*)], the sd, *trustees*, or the [survivors or] survivor of them, or the exors or admors of such survivor shall take and retain possession or receive the rents and profits of the sd premises, [or of such undivided share thereof (*g*)], and manage the same, with the same powers in

(*c*) See also forms XXIX. and XXX., p. 1168 ; and for a form of power to female tenants for life to appoint life interests to surviving husbands, see p. 1169.

(*d*) Add also forms XXIX. and XXX., p. 1168, if appropriate, *mutatis mutandis*.

(*e*) The full form may readily be adapted from SETTLEMENTS REAL, p. 1170, form XXXIV.

(*f*) If there is a power of appointment among children or issue, say, " of any person who, if of full age, would, for the time being, be beneficially entitled under any appointment under the power [respective powers] hereinbefore contained, or in default of appointment, in possession to the sd hereditaments and premises [or any undivided share thereof] for any estate by purchase."

(*g*) The words in these brackets to be inserted where there is a limitation to tenants in common.

that behalf as if they or he were absolutely entitled thereto: And shall, after paying all outgoings and expenses, apply at their or his discretion the whole or any part of the net rents and profits of the sd premises, [or undivided share (*g*)], for the maintenance and education of such minor, with power to pay the same to his or her guardian or guardians for that purpose, without seeing to the application thereof, and shall apply the surplus thereof, if any, as if the same had arisen from a sale of the sd premises under the power of sale hereinafter contained, but so that such surplus or the investments thereof may be applied for the maintenance or benefit of such minor in any subsequent year or years.

Power to lease for twenty-one years (*a*).

xxxii. And I declare, that it shall be lawful for the sd —— during his life, and for the sd, *trustees*, or the [survivors or] survivor of them, or the exors or admors of such survivor, during the minority of any son [or daughter] of the sd ——, who, if of full age, would be entitled to the possession or receipt of the rents and profits of the sd hereditaments and premises, [(*g*) or of any undivided share or shares thereof], (*b*) to demise (*c*) all or any of the sd

(*a*) For other forms of powers of leasing, &c., see Settlements Real, p. 1175, form xxxvii., power to grant building and improving leases; p. 1176, power to grant mining leases; p. 1177, power to grant leases of easements; p. 1178, form xl., power to accept surrenders of leases and to take value of surrendered lease into account on granting a renewal; p. 1178, form xli., power to lay out property for building; p. 1179, power to accept leases of easements; p. 1180, form xliii., power to make agreements for leases, &c.; p. 1180, form xliv., power to grant licences to copyholders, &c.; p. 1181, proviso to be added to powers of leasing, &c., where there is a limitation to tenants in common; all of which forms may be readily adapted to a will.

(*b*) If the will contains several leasing powers, it may be found convenient to continue from this point as follows:—"to exercise over the whole or any part or parts of the same premises [or according to circumstances, of any such undivided share or shares thereof,] the powers following, that is to say, First, a power to demise, &c., *as in the text;* Secondly, a power to demise, &c."

(*c*) See above, p. 1174, note (*c*).

hereditaments and premises for any term of years not exceeding twenty-one years, to take effect in possession, or within six calendar months from the date of the lease, [(*e*) so as there be reserved in every such lease the best yearly rent or rents to be incident to the reversion that can be reasonably obtained without taking anything in the nature of a fine or premium, and so as there be contained in every such lease a condition of re-entry for non-payment, within a reasonable time to be specified therein, of the rent or rents thereby reserved].

The same where there are various limitations for life, and in tail or fee.

XXXIII. And I declare, that it shall be lawful for (*f*) every person hereby made tenant for life of the sd hereditaments hereinbefore devised when he [or she] shall be entitled to the possession or the receipt of the rents and profits of the same premises, and also for the sd, *trustees*, or the [survivors or] survivor of them, or the exors or admors of such survivor, during the minority of any person who under the limitations hereinbefore contained, if of full age, would be entitled, &c., *continue as in preceding form.*

Short power of leasing by reference to the Settled Estates Act, 1877.

XXXIV. And I declare, that it shall be lawful for, *&c., as in form* XXXII. *or* XXXIII., to grant any such lease of all or any part of the sd hereditaments and premises, or any rights over the same, as the Chancery Division, by virtue of the Settled Estates Act, 1877, or any Act or Acts for the time being in force, amending, extending, or re-enacting the same, is or shall be enabled to authorise, subject to such provisions and restrictions as to the nature and terms of the lease as would be required by the sd Act or Acts to be inserted if the lease were granted under the authority of the Court, except that, upon any lease of earth, coal, stone, or minerals, it shall not be incumbent to provide for the

(*e*) Where brevity is of importance, substitute "at rack rent" for the words in this bracket. It is not considered necessary, in the case of a lease for twenty-one years, that it should be made a condition of the validity of the lease, that the lessee should execute a counterpart.

(*f*) For the variation, where the form of name and arms clause at p. 1152 is used, or where a protected life interest is given, see above, p. 1175, note (*e*).

setting aside or investment, or to deprive the immediate reversioner of the benefit of any part of the rent or payment reserved.

Commencement of powers of sale and exchange, enfranchisement, partition, &c. (*g*).

XXXV. AND I HEREBY DECLARE, that it shall be lawful for the sd, *trustees*, or the [survivors or] survivor of them, or the exors or admors of such survivor, during the life of the sd ——, with his consent in writing, and after his decease, and during the minority of any son [or daughter] of the sd ——, who, if of full age, would, for the time being, be entitled to the possession or receipt of the rents and profits of the sd hereditaments and premises [or of any undivided share or shares thereof (*a*)] at the discretion of the sd trustees or trustee for the time being to, &c. (*b*).

The same where there are various limitations for life and in tail.

XXXVI. AND I HEREBY DECLARE, that it shall be lawful for the sd, *trustees*, or the [survivors or] survivor of them, or the exors or admors of such survivor, during the life of any person (*c*) who, under the limitations hereinbefore contained shall, for the time being, be beneficially entitled to the possession or receipt of the rents and profits of the sd hereditaments and premises as tenant for life, with his [or her] consent in writing, and also during the minority of any person who, under the limitations hereinbefore contained, would, if of full age, be for the time being beneficially entitled to the possession or receipt of the rents and profits of the same premises [(*a*) or of any undivided share or shares

(*g*) These forms may be adapted from SETTLEMENTS REAL, pp. 1183, *et seq.*, with merely verbal alterations. See also the forms of powers to partition, p. 1183; to grant easements, p. 1184; to purchase easements, p. 1185; to renew leases, p. 1185; and to raise money on mortgage, p. 1185; power in settlement of undivided share to concur with co-owners in selling, &c., p. 1186; and the power to trustees to lay out money in improvements, p. 1193.

(*a*) The words in brackets to be inserted where there is a limitation to tenants in common. See the provision at p. 1187, form LIX., for this case.

(*b*) If there are several powers given to the trustees, it may be convenient to continue as follows :—"To exercise the powers following, that is to say: FIRST, a power to, &c.; SECONDLY, a power, &c."

(*c*) For the variations where the form of name and arms clause, at p. 1152, is used, or where a protected life interest is given, see p. 1182, note (*b*).

thereof] as [tenant for life or] tenant in tail [male or in tail] by purchase, at the discretion of the sd trustees or trustee for the time being, to, &c. (*d*).

Short power of sale and exchange, adopting the provisions of the Act, 23 & 24 Vic. c. 145.

XXXVII. PROVIDED ALWAYS, and I declare, that the sd, *trustees*, and the [survivors and] survivor of them, and the exors or admors of such survivor, shall have a power of sale and exchange over all or any of the sd hereditaments and premises [exercisable during the life of the sd ——, with his consent in writing, and after his death, and during the minority of any son [or daughter] of the sd ——, who, if of full age, would be entitled to the possession or receipt of the rents and profits of the same premises [or any undivided share thereof (*e*)], at the discretion of the sd trustees or trustee for the time being (*f*)]. *Add if required power to sell surface and minerals separately*, p. 1183.

Power to trustees to grant easements, &c., to local authorities. (*a*)

XXXVIII. I EMPOWER the sd, *trustees*, and the [survivors and] survivor of them, and the exors or admors of such survivor, to grant to any local authority as defined by the

(*d*) See note (*b*) to last form.

(*e*) The words in this bracket to be inserted, if there is a limitation to tenants in common.

(*f*) If there are several life estates and limitations to collaterals, substitute for the words bracketed, "Exercisable during the life of any person of full age, who, under the limitations hereinbefore contained, shall for the time being be beneficially entitled to the possession or receipt of the rents and profits of the sd hereditaments and premises as tenant for life, with his [or her] consent in writing, and during the minority of any person who under such limitations would, if of full age, be for the time being beneficially entitled to the possession or receipt of the rents and profits of the same premises [or of any undivided share or shares thereof] as [tenant for life or] tenant in tail [male or in tail], [or in fee] by purchase, at the discretion of the sd trustees or trustee for the time being." For the variation, where the form of name and arms clause, at p. 1152, is used, or where a protected life interest is given, see above, p. 1182, note (*b*).

(*a*) A power of this kind might often be useful for carrying out works of drainage or water supply.

Public Health Act, 1875, or any other Act for the time being in force, either for a term of years or in perpetuity, any part or parts of the sd hereditaments and premises or any easements or rights over or affecting the same, which such local authority may be authorised by any such Act as aforesd to take or acquire on lease or in perpetuity for such consideration or considerations and upon such terms in all respects as the sd trustees or trustee may think fit, but so that any sum taken as or in the nature of a fine or premium shall be applied or disposed of as if the same had arisen from a sale under the power hereinbefore contained.

Devise of copyholds on trusts corresponding with uses of freeholds.

XXXIX. I DEVISE all the hereditaments of copyhold or customary tenure [situate in the parishes of, &c., in the county of, &c.,] which I may be possessed of or entitled to or have power to dispose of at my decease, except what I otherwise dispose of by this my will, or any codicil hereto, TO THE USE of the sd, *trustees*, their heirs and assigns, according to the customs of the several manors of which the same shall respectively be holden, upon such trusts, and with and subject to such powers and provisions as shall correspond with the uses, trusts, powers, and provisions hereinbefore declared and contained concerning the freehold hereditaments hereinbefore devised, or as near thereto as the different tenures and other circumstances will admit, but not so as to increase or multiply charges or powers of charging.

Bequest of leaseholds on trusts corresponding with uses of freeholds (*a*).

XL. I DEVISE AND BEQUEATH all the leasehold hereditaments [situate in the respective parishes of, &c., in the county of, &c.], [whether held for years, or for a life, or lives], which I may be entitled to, or have power to dispose of at my decease, except what I otherwise dispose of by this my will, or any codicil hereto, Unto the sd, *trustees*, their exors, admors (*b*), and assigns, for all the term, estate and interest therein respectively, which I may

(*a*) For forms of trusts of chattels as heirlooms, see pp. 1195, 1196, forms LXVII. and LXVIII., which may readily be adapted to a will.

(*b*) See above, p. 1194, note.

have, or can dispose of by will, Upon trust that the sd, *trustees*, or the [survivors or] survivor of them or the exors or admors of such survivor, shall by and out of the rents, &c., *continue as at* p. 1195, *form* lxvi., *mutatis mutandis*.

Clause putting son to election to resettle family estate.

xli. I devise the —— estate, of which I am now tenant for life under the limitations of an indre, &c., *or*, "the will, dated, &c., of ——," to the uses, upon the trusts, and with and subject to the powers and provisions herein declared and contained concerning the hereditaments and premises hereinbefore devised in strict settlement (*c*): And I direct that the devise lastly hereinbefore contained shall take effect under the doctrine of election in equity, and shall thereby bind every son [child] of mine who shall, under the limitations of the sd indre, *or* "will," become tenant in tail male [or in tail], in possession of the —— estate, who shall accordingly, at the request in writing and to the satisfaction of the sd, *trustees*, or the [survivors or] survivor of them, or the exors or admors of such survivor, and at his [or her] own cost, execute, complete, perfect, and do all such instruments and acts as may be necessary for evidencing such election, and giving effect to the devise of the sd —— estate hereinbefore contained: And I declare that if any son [child] of mine shall refuse or neglect to comply with any such request in writing of the sd trustees or trustee, or shall otherwise fail to execute, complete, perfect, or do such instruments or acts as aforesd, or any of them, then my will shall be construed, and the rights of all persons claiming hereunder be determined in all respects, as if such son [child] had died immediately before me, without having been married.

Clause as to residence (*d*).

xlii. And I declare it to be my particular wish and request, but without imposing any legal obligation, that the

(*c*) If the will does not contain any devise in strict settlement, set out the uses.

(*d*) A compulsory clause of this nature is very objectionable. If required, it may be founded on the name and arms clause, see p. 1152.

person for the time being entitled to the possession of my mansion house at ——, if of full age, will make it his or her principal place of residence.

TRUSTEE CLAUSES.

Trustees' receipt clause. (*e*)

I. I DECLARE that the receipt of my trustees for the purchase-moneys of any property hereby directed or authorized to be sold, or for any other moneys, stocks, funds, shares, or securities, paid, delivered, or transferred to them under this my will, or any codicil hereto, or in the execution of the trusts or powers thereof, shall effectually discharge the person or persons paying, delivering, or transferring the same therefrom, and from being concerned to see to the application, or being answerable for the loss or misapplication thereof.

Power to appoint new trustees. Variations for several sets of trustees and other circumstances.

II. PROVIDED ALWAYS, and I hereby declare that if the sd [several] trustees hereby constituted, or any of them, shall die in my lifetime, or if they or any of them, or any trustee or trustees appointed under this present power or by a court of competent jurisdiction, shall die after my decease, or reside abroad, or desire to be discharged, or refuse or become unfit or incapable to act, then and in every such case it shall be lawful (*f*) for the surviving or continuing

(*e*) The receipt clause, the power to appoint new trustees, and the trustees' indemnity and reimbursement clauses may now usually be omitted in reliance on recent enactments (see as to the receipt clause, 22 & 23 Vict., c. 35, s. 23, 23 & 24 Vict., c. 145, s. 29; as to the power to appoint new trustees, the last-mentioned act, s. 27; and as to the indemnity and reimbursement clauses, the first-mentioned act, s. 31), and a short clause substituted, see form VIII. But it may occasionally be proper to insert the full clauses if the testator owns property situate abroad, where there may be no enactments corresponding to those referred to.

(*f*) Sometimes the power of appointing new trustees is given to the tenant for life; if this is intended, insert here, "for the sd, *tenant for life*, during his life and afterwards."

trustees or trustee [of the class in which such vacancy or disqualification shall occur,] (and for this purpose every refusing or retiring trustee shall, if willing to act in the execution of this power, be considered a continuing trustee,) or for the acting exors or exor, or admors or admor, of the last surviving and continuing trustee [of the same class] (*a*) to appoint a new trustee or new trustees in the place of the trustee or trustees so dying or residing abroad, or desiring to be discharged, or refusing or becoming unfit or incapable to act as aforesd: And upon every such appointment the number of trustees may be increased or diminished, [but not to less than two,] And upon every such appointment the trust property (if any) [then vested in the trustees or trustee of the class in which such vacancy or disqualification shall occur, or in the heirs, exors or admors of the last survivor of such trustees] shall as soon as circumstances will admit be vested in the trustees [or trustee] (*b*) for the time being [of the same class] but every new trustee may, as well before as after the trust property shall have been so transferred, execute all the trusts or powers of this my will [trusts or powers in respect of which he shall be so appointed a trustee,] as fully and effectually as if he had been hereby constituted a trustee.

Power to appoint special trustees of particular property. (*c*)

III. PROVIDED ALWAYS, and I hereby declare that it shall

(*a*) Sometimes the power is made exercisable with the consent of the beneficiaries. The following are various forms requiring consent to be inserted here: "with the consent in writing of the sd, *tenant for life*, during his lifetime, or, "*tenants for life*, or the survivor of them, during their, his, or her lifetime," or, "of such of my sons as shall, for the time being, be of full age," or, "of the person of full age, if any, for the time being entitled to the income of the trust property."

(*b*) If the words, "but not to less than two," above bracketed are inserted, the words, "or trustee," will, of course, be here omitted.

(*c*) When power is given to appoint special trustees of any share, it will probably be desirable to insert also the power to appropriate specific parts of the property in satisfaction of any of the shares. See p. 1273, form VI.

be lawful for my trustees to appoint any persons, not being less than two in number, of whom any one or more of the general trustees of this my will may be one or more, to be trustees of, *here describe the property as*, "such part of the sd trust premises as shall for the time being be situate in New Zealand," *or*, "the share or shares of any daughter [child] of mine in the trust premises," and upon every such appointment the trust property, *or*, "share or shares," in respect of which such trustees shall be so appointed shall, as soon as circumstances will admit, be transferred so as to be vested in them upon the trusts herein declared concerning the same, and the trustees so appointed may as well before as after such transfer act in the execution of the trusts or powers of my will so far as regards the trust property, *or*, "share or shares," of which they shall be appointed trustees as fully and effectually, and all the provisions of my will, including the power to appoint new trustees, shall apply to them as if they had been originally hereby appointed trustees of the same trust property, *or*, "share or shares."

Power to delegate trusts to resident trustees.

IV. I AUTHORISE my trustees from time to time to delegate to such of the sd trustees as may for the time being be resident in England, the execution of the trusts and powers of this my will, as regards property situate in England, and to such of the sd trustees as may for the time being be resident in New Zealand, the execution of the aforesd trusts and powers as regards property situate in New Zealand, and from time to time to revoke such delegation, and for that purpose, to execute such powers of attorney or other instruments as may be proper without being responsible for loss: And I declare that no purchaser or other person dealing with any trustees or trustee to whom the execution of any of such trusts or powers may have been delegated shall be bound to inquire whether such delegation remains in force.

Declaration as to

V. AND I DECLARE that the net proceeds of sales, and rents, income, or other moneys, realized from my property

moneys received by resident trustees.

in New Zealand, which shall not be required for payment of debts, or expenses, or other purposes in New Zealand, shall from time to time be remitted to my trustees in England, to be applied by them upon the trusts of this my will.

Clause for indemnity and reimbursement of trustees. Variations for several sets of trustees and other circumstances.

VI. PROVIDED always, and I hereby declare that my trustees [the several trustees of this my will] shall be respectively chargeable only for such moneys, stocks, funds, shares, and securities as they shall respectively actually receive, notwithstanding their respectively signing any receipt for the sake of conformity, and shall be answerable and responsible only for their own acts, receipts, omissions, neglects and defaults respectively, and not for those of each other, nor for any banker, broker, auctioneer [attorney], or other person with whom, or into whose hands, any trust moneys or securities shall be deposited or come, nor for dispensing wholly or partially with the investigation or production of the lessor's title as to leaseholds, nor for otherwise accepting less than a marketable title on [the purchase, or taking in exchange, or on partition or enfranchisement, or on] lending money on the security of any hereditaments, [nor for any defect in title or value of any hereditaments purchased or taken in exchange or on partition or enfranchisement or on mortgage], nor for the insufficiency or deficiency of any stocks, funds, shares, or securities, nor for any other loss, unless the same shall happen through their own wilful default respectively, and also that the sd [several] trustees or trustee for the time being may reimburse themselves or himself respectively, or pay or discharge out of the sd trust premises all expenses incurred in or about the execution of the trusts or powers of this my will.

The same. A short form.

VII. I DECLARE that my trustees shall not be answerable or accountable any one or more for the others or other of them, and by no means for involuntary losses, and that they respectively shall be entitled to be reimbursed out of the trust premises all costs, damages, and expenses incurred or sustained in the execution of the trusts aforesd.

VIII. I DECLARE that on any appointment of a new trustee or trustees of this my will the number of trustees may be increased or diminished, but not to less than two; And in addition to the ordinary indemnity given by law to trustees my trustees may dispense wholly or partially with the investigation or production of the lessor's title as to leaseholds or otherwise accept less than a marketable title on [the purchase or taking in exchange or on partition or enfranchisement or] lending money on the security of any hereditaments, and shall not be liable for any loss occasioned thereby.

Clause supplemental to statutory power of appointment and indemnity of trustees. (*d*)

IX. I DECLARE that the power of appointing a new trustee or trustees of this my will, shall be vested in the surviving or continuing trustees or trustee for the time being of the class in which the vacancy or disqualification shall occur, or in the acting exors or exor, admors or admor, of the last surviving and continuing trustee, or in the last retiring trustees or trustee of the same class, and on every such appointment the number of trustees may be increased, &c., *continue as in preceding form.*

The same where there are several sets of trustees.

X. AND I DECLARE that the sd —— [and every other trustee for the time being of this my will being a solicitor or engaged in any other profession or business] shall be entitled to make and receive all such charges and emoluments for business done by him in relation to the administration of my estate or the execution of the trusts of this my will, or any codicil hereto, as he would have been entitled to make and receive in respect of such business, if he had not been an [exor or] trustee.

Power to exors or trustees being solicitors or professional men to charge for business done.

XI. AND FURTHER that he may agree with the other trustees or trustee for the time being to receive and be paid in respect of all or any particular part of such business, in lieu of the ordinary professional charges, a salary of such amount and during such period as may be agreed upon.

Addition to last clause enabling professional trustee to be paid by a salary.

(*d*) For the form when the power of appointing new trustees is vested in the tenant for life, see SETTLEMENTS PERSONAL, p. 1090.

Declaration as to devolution of trustees' powers (*e*).

XII. I DECLARE that all the trusts and powers hereinbefore given to or vested in my trustees shall vest in and devolve upon and be exercisable by the sd, *trustees*, and the [survivors and] survivor of them and the heirs or, according to the nature of the property, the exors or admors of such survivor, or other the trustees or trustee for the time being of this my will.

The same where there is a devise in strict settlement (*f*).

XIII. I DECLARE that, as regards my freehold estate hereinbefore devised in strict settlement, all trusts and powers hereinbefore given to or exercisable by my trustees, shall devolve upon, and be exercisable by the sd, *trustees*, and the [survivors and] survivor of them, and the exors or admors of such survivor, or other the trustees or trustee for the time being of this my will, and that in all other cases all the trusts and powers, &c., *continue as in last form*.

Devise of trust and mortgage estates.

XIV. I DEVISE AND BEQUEATH all estates vested in me as a trustee or mortgagee to the sd, *exors*, their heirs, exors, and admors respectively according to the nature thereof, upon the trusts, and subject to the equity of redemption affecting the same respectively, but the money secured on such mortgages, and not held by me as a trustee, shall be taken as part of my personal estate.

(*e*) When this or the next form is used, the expression "my trustees" may be used throughout the will, as in the above forms.

(*f*) This form is applicable only where there is but one set of trustees. If it is used, the words, "the sd, *trustees*, or the [survivors or] survivor of them, or the exors or admors of such survivor," at their first occurrence will be followed by the words, "hereinafter called my trustees;" and in all subsequent parts of the will the phrase "my trustees" will be substituted for them, or for "the sd trustees or trustee."

APPOINTMENT OF EXECUTORS, &c.

Appointment of exor or exors.

I. I APPOINT my son D. sole exor, *or*, "my wife C. sole executrix" of this my will, *or*, "A. of, &c., B. of, &c., and C. of, &c., exors of this my will."

Appointment of exors and trustees.

II. I APPOINT A. of, &c., B. of, &c., and C., of, &c., exors and trustees of this my will.

The same, including wife while unmarried.

III. I APPOINT my wife C. [so long as she shall remain unmarried], and my son D. executrix and exor [and trustees] of this my will [and I direct that in the event of my sd wife marrying again, the trust estate shall be transferred so as to be vested in the other trustees or trustee for the time being].

The same, with substitution.

IV. I APPOINT A. B. and C. exors [and trustees] of this my will, and in case any one of them shall die in my lifetime or shall renounce probate thereof, I appoint D. an exor in his place [and in case any one of them shall die in my lifetime or decline to act as trustee, I appoint the sd D. a trustee in his place, and I direct that the trust estate shall in such case be transferred so as to be vested in the sd D. jointly with the other acting trustees or trustee].

The same, including son on attaining twenty-one.

V. I APPOINT A. and B., and also my son C. in case and when he shall attain the age of twenty-one years, exors of this my will. [I appoint the sd A. and B. trustees of this my will, and I also appoint the sd C. in case and when he shall attain the age of twenty-one years to be an additional trustee thereof, and I direct that the trust property shall thereupon be transferred so as to be vested in him jointly with the sd A. and B.]

Appointment of legatee special exor, as to property bequeathed to him. (*g*)

VI. I APPOINT the sd A. exor of this my will as to the sd [bond debt] and premises hereinbefore bequeathed to him, and I direct that the expense of taking out the limited probate in respect thereof shall be borne by him, and I appoint C. and D. general exors of this my will.

(*g*) If the testator's business is bequeathed to trustees who are appointed

Power to exors to compromise, &c. (*h*)

VII. I AUTHORISE my acting exors or exor for the time being to pay any of my debts or any claims upon my estate upon any evidence that they or he shall think sufficient, and to accept any composition or any security, real or personal, for debts due to me or my estate, and to allow any time for the payment of such debts as they or he shall think fit, and also to compromise, compound, or submit to arbitration all debts, accounts, claims, or things whatsoever belonging or relating to my estate, and for any of the purposes aforesd, to enter into, give, and execute such agreements, instruments of composition, releases, and other things as they or he shall think expedient, without being responsible for loss.

Appointment of guardians.

VIII. I APPOINT my sd wife during her life [widowhood], and after her decease [or second marriage] the trustees or trustee for the time being of this my will to be the guardian or guardians of my infant children during their respective minorities.

The same. Another form. (*i*)

IX. I APPOINT my sd wife during her life, and after her death such person or persons as she shall by will or codicil appoint, and in default of such appointment or after the death or refusal to act of the person or all the persons so appointed, then the trustees or trustee for the time being of this my will, to be the guardian or guardians of my infant children during their respective minorities.

special exors, the following power should be added: "AND I AUTHORISE the sd, *trustees*, to pay any debts or claims in respect of the sd business, &c." continue as in next form, saying, where necessary, "in respect of the sd business."

(*h*) This may generally be omitted in reliance on 23 & 24 Vic., c. 145, s. 30, except in such a case as is mentioned in the last note.

(*i*) The father's testamentary power of appointing a guardian may be delegated; *Re Parnell*, L. R. 2 P. & D. 379.

TESTIMONIUM AND ATTESTATION.

Testimonium of will.

I. In witness whereof, I, the sd ——, have, to this my will, [to each sheet of this my will], [contained in —— sheets of paper] (*k*) set my hand this —— day of ——.

The same of codicil.

II. In witness whereof, I, the sd ——, have hereunto [to each sheet of this codicil], [contained in —— sheets of paper] (*k*) set my hand this —— day of ——.

Attestation of will or codicil.

III. Signed by the sd testator as [a codicil to] his last will in the presence of us, present at the same time, who, in his presence and at his request and in the presence of each other, have hereunto subscribed our names as witnesses.

Attestation of will made on day of testator's marriage. (*a*)

IV. Signed by the sd testator on the day of and shortly after his marriage with —— as his last will in the presence of us, &c., *as above*.

Attestation where testator is blind or illiterate.

V. Signed by the sd testator as his last will, the same having been first read over to him in our presence, with his mark, (*b*) in the presence of us, &c., *as above*.

Attestation where another person signs for testator.

VI. Signed by, *amanuensis*, with the name of the sd testator as his last will in his presence and by his direction (*c*) in the presence of us, *&c., as above*.

Attestation where there have been alterations or erasures. (*d*)

VII. Signed, &c., *as above*, the interlineation between the —— and —— lines of the —— page, and the alteration in the —— line of the —— page, and the erasure on the —— line of the —— page having been previously made [*or*, the words "——" having previously been erased, *or*, substituted for the words "——" in the —— line, *or*, interlined between the —— and —— lines of the —— page.]

(*k*) The testator should sign each sheet, though this is not essential; the attesting witnesses usually sign the last sheet only.

(*a*) The object of this special attestation of course is to record the fact that the will was not made *before* the marriage, so as to be thereby revoked.

(*b*) The testator's hand may be guided in making his mark or signature.

(*c*) The amanuensis may be one of the attesting witnesses, and must sign the testator's name.

(*d*) If the alterations are not noticed in the attestation clause, the testator and the attesting witnesses should place their initials opposite or against each alteration.

PRECEDENTS.

I.

PREC. I.

OUTLINE WILL *shewing the* GENERAL ARRANGEMENT *of the clauses.*

Commencement, p. 1229 ; *Confirmation of marriage settlement*, p. 1229 ; *Specific bequests of furniture and personal effects, &c.*, pp. 1232 *et seq.* ; *other specific legacies*, p. 1230 ; *Bequests of leaseholds*, p. 1237 ; *Bequest of business*, p. 1240 ; *General legacies*, p. 1247 ; *Bequests of annuities*, p. 1256 ; *Specific devises*, p. 1262 ; *Management and maintenance, &c., clauses as to specifically devised real and leasehold property*, pp. 1313 *et seq.* ; *Gifts of residue*, p. 1268 ; [*Trusts for conversion, with power to postpone conversion and subsidiary clauses*, pp. 1271 *et seq.* ; *Trusts for payment of debts and legacies*, p. 1275 ; *and investment*, pp. 1276 *et seq.* ;] *Beneficial trusts of residue*, pp. 1277—1308 ; *Maintenance, accumulation and advancement clauses*, pp. 1308 *et seq.* ; [*Powers of sale and conversion of real and personal estate where there is no previous trust for conversion, and provisions for investment of proceeds and subsidiary clauses*, p. 1272 ;] [*Declaration of trust of income until conversion and provision as to income of wasting property*, pp. 1275 *et seq.* ;] *Powers of managing and leasing real and leasehold estates*, pp. 1317 *et seq.* ; *Power to mortgage*, p. 1323 ; *Power to partition*, p. 1325 ; *Power to purchase land*, p. 1319 ; *Power to allot specific property in satisfaction of legacies or shares of residue*, p. 1273 ; *Power to wind up or carry on business*, pp. 1241 *et seq.* ; *Various powers*, pp. 1274 *et seq.*, 1321 *et seq.* ; *Declaration that interests given to females shall be for their separate use*, p. 1307 ; *Miscellaneous provisions ; Power to trustees to determine questions*, p. 1326 ; *Short trustee clause*, p. 1353 [*or full trustees' receipt clause, and provisions as to*

appointment of new trustees, and indemnity and reimbursement of trustees, pp. 1349 *et seq.*;] *Power to professional trustees to charge for business done*, p. 1353; *Declaration as to devolution of trustees' powers*, p. 1354; *Appointment of exors*, p. 1355; *Power to exors to compromise, &c.*, p. 1356; *Devise of trust and mortgage estates*, p. 1354; *Appointment of guardians*, p. 1356; *Testimonium*, p. 1357. PREC. I.

Attestation, p. 1357. *Testator's Signature.*

II.

WILL *making* WIFE UNIVERSAL DEVISEE *and* LEGATEE, *and appointing her* EXECUTRIX *and* GUARDIAN. PREC. II.

Commencement, p. 1229. I DEVISE AND BEQUEATH all the real and personal estate and effects whatsoever and wheresoever to which I may be entitled, or which I may have power to dispose of at my decease (including any hereditaments or property vested in me upon any trusts or on mortgage, subject to the equities affecting the same), unto and to the use of my dear wife B., her heirs, exors, admors, and assigns, absolutely, and I appoint her my executrix and guardian of my infant children during their respective minorities. IN WITNESS whereof I have hereunto set my hand this —— day of ——. General devise and bequest. Appointment of executrix and guardian.

III.

WILL *giving residuary* REAL *and* PERSONAL ESTATE *absolutely*, SUBJECT *to* LEGACIES *and* ANNUITIES CHARGED *or* NOT *on* REALTY *in aid of personalty*. PREC. III.

Commencement, p. 1229; *Specific legacies*, pp. 1230 *et seq.*; *General legacies*, pp. 1247 *et seq.*, *see* p. 1255, *form* XL.;

PREC. III. *Bequests of annuities*, pp. 1256 *et seq.*, *see* p. 1261, *forms* XIII. *and* XIV.; *Bequest of residuary personalty and realty*, p. 1269, *form* III., *adding after the bequest of the personalty the words*, "subject to and after payment of my funeral and testamentary expenses," &c., *as in* p. 1268, *form* I., *and inserting after the gift of the real estate the words*, "charged in aid, &c.," *in form* III., *if the real estate is to be charged; Appointment of exors*, p. 1355; *Devise of trust and mortgage estates*, p. 1354. IN WITNESS, &c.

IV.

PREC. IV. WILL *disposing of* REAL *and* PERSONAL *estate in trust for* CONVERSION *and payment of* INCOME *to* WIFE *for* LIFE *or* WIDOWHOOD, *with remainder in* TRUST *for* CHILDREN, *with* VARIATIONS. ULTIMATE *trust for testator's* BROTHERS *and* SISTERS, *or* NEPHEWS *and* NIECES.

Commencement, p. 1229, *form* I.; [*Confirmation of marriage settlement*, p. 1229;] *Bequest to wife of furniture and moveables and wines and consumable stores*, p. 1232; *Other specific legacies*, p. 1230; *Immediate pecuniary legacy to wife*, p. 1248, *form* VI.; *General legacies*, p. 1247; *Devise and bequest of realty and residuary personalty to trustees*, p. 1270, *form* VIII.; *upon trust for conversion, with power to postpone conversion*, p. 1272, *form* III. [*or Gift of residuary realty and leaseholds to trustees*, p. 1270, *forms* VI. *or* VII.; *Gift of residuary personalty to trustees*, p. 1269, *form* V., *omitting at the end of each form the words*, "that is to say upon trust;" AND I DECLARE that my trustees shall, &c., &c.]; *Trusts of proceeds of conversion to pay debts, &c.*, p. 1275, *form* X.; *and for investment*, p. 1276, *form* XIII.; *Trusts for payment of income to wife for life or widowhood*, p. 1278, *form* I. [*charged with maintenance of children*, p. 1281, *form* VII.]: AND AFTER

PREC. IV.

the death [or marriage] of my sd wife, shall stand possessed of the sd trust premises and the income thereof, [*trust for children as widow shall appoint*, p. 1282, *form* I. *or* III.]; [*Proviso where wife's interest is determinable on marriage*, p. 1282, *note* (*c*)]; *Trust for children at twenty-one, &c.*, p. 1283, *form* IV., *or*, p. 1284, *form* V.; [*for the form where daughters marrying without consent are absolutely excluded, see form* VI.; *where children dying in testator's lifetime leaving issue are to be included, see*, p. 1287, *form* XII.; *where the issue of children dying in testator's lifetime are to be substituted for the parents, see* p. 1288, *form* XV., *or*, p. 1289, *form* XVIII.; *where the issue of children dying in the widow's lifetime are to be substituted for the parents, see* p. 1289, *form* XVII.; *where the children take unequally, see* p. 1291, *form* XXI. *or* XXII.; *where shares are given to any of the children by name, insert, if appropriate, the accruer clause*, p. 1306, *form* VIII.]; [*If the widow has a power of appointment, Hotchpot clause*, p. 1293, *form* XXV.]; *Clause directing sums taken under marriage settlement to be taken into account*, p. 1293, *form* XXVI.; *Advances made to children by testator in his lifetime to be brought into account*, p. 1293, *form* XXVII.; [*Maintenance and accumulation clauses*, p. 1308, *forms* I. *and* II.]; *Advancement clause*, p. 1309, *form* III.; [*where the children are to be maintained out of the income as a common fund, see* p. 1309, *form* IV.; *and where out of capital*, p. 1312, *form* VIII.]; *Ultimate trust in default of children commencing as at* p. 1305, *form* IV., *or if more appropriate, as in form* III. *or* V., *for brothers and sisters of testator*, [*or his nephews and nieces*, "being children of my own brothers and sisters,"] *living at his death, or at time of failure of prior trusts, and children of those dead*, p. 1304, *form* I. *or* III.; *Direction as to income until conversion*, p. 1275, *form* XI.; *Power to manage real and leasehold estates until sale*, p. 1317, *form* I. *or* II.; *Power to grant leases of unsold lands*, p. 1318, *form* III. *or* IV.; *Power to allot specific property in satisfaction of shares of residue*, p. 1273, *form* VI.; *Power to trustees to determine questions*, p. 1326, *form* XVII.; *Short trustee clause*, p. 1353, *form* VIII.; *Declaration as to devolu-*

PREC. IV. *tion of trustees' powers*, p. 1354, *form* XII.; *Appointment of exors*, p. 1355; *Devise of trust and mortgage estates*, p. 1354; *Appointment of guardians*, p. 1356. IN WITNESS, &c.

V.

PREC. V.

WILL, *containing bequest of* STOCK *legacy to a* SISTER *and her* ISSUE, *and disposing of* REAL *and* PERSONAL *Property in trust for* CONVERSION. TRUSTS *for* WIDOW *for* LIFE, *remainder for Testator's* CHILDREN. VARIATIONS *for a* WILL *of a* SMALL TRADER. *A very* SHORT FORM.

Commencement, p. 1229, *form* II.; *Bequest of furniture &c., to wife*, p. 1232, *form* XVIII.; *Bequest of stock legacy to trustees*, p. 1248, *form* V.; UPON TRUST to pay the dividends thereof to my sister —— during her life for her separate use independently of any husband, and without power of anticipation, and from and after her decease as to the capital of the sd sum of stock IN TRUST for her children or child living at her death, if more than one, in equal shares: BUT IF she shall not have any child then living, then the same sum of stock shall sink into, and become part of my residuary personal estate: *General legacies*, p. 1247: I GIVE all my real and personal property not otherwise disposed of to A., of, &c., and B., of, &c., their heirs, exors, and admors, UPON TRUST to sell, convert, and get in the same (but with full discretionary power to postpone such sale and conversion and getting in indefinitely), and out of the proceeds to pay my funeral and testamentary expenses, debts, and legacies, and to invest the residue thereof in the names or under the legal control of my trustees in or upon *investments*, p. 1049, *form* IV., V., *or* VI., with power to vary such investments at discretion, AND UPON TRUST to pay the income of my sd residuary estate, and the investments thereof to

Bequest of stock legacy to a sister and her issue.

General devise and bequest.

Trust for conversion.

Investment.

Income.

my wife during her life, and after her death to hold the same trust premises [*Power of appointment to wife in favour of testator's children*, p. 1283, *form* III.]; *Trusts for children*, p. 1283, *form* IV.; [*for variations in the trusts for the children, see the references in the last Precedent*] [*Hotchpot clause*, p. 1293, *form* XXV.]; *Advancement clause*, p. 1309, *form* III.; [*For trader, add short form of power to carry on business*, p. 1244]: I DECLARE that the net annual produce arising from the unconverted part of my estate, whether real or personal, and whether of a permanent or a leasehold or wasting character [including the net profits derived from the carrying on of the sd business], shall be applied in the same manner as if the same were income arising from the proceeds of the conversion of my estate. *Power to manage and lease real and leasehold property until sale*, p. 1318, *forms* II. *and* III.; *Short trustee clause*, p. 1353, *form* VIII.; *Declaration as to devolution of trustees' powers*, p. 1354, *form* XII.; *Appointment of exors*, p. 1355; *Devise of trust and mortgage estates*, p. 1354; *Appointment of guardians*, p. 1356. IN WITNESS, &c.

PREC. V. Capital. Declaration as to income till conversion.

VI.

WILL, *giving an* ANNUITY *to the Testator's* WIFE, *and containing specific and residuary* BEQUESTS *to his two* CHILDREN, ONE *of whom is a* MINOR, *with a* GIFT OVER *on his* DEATH *under twenty-one to the other.* DOWER *clause. Power to* CONTINUE *a* LOAN. *A Short Form.*

PREC. VI.

Commencement, p. 1229; *Gift to wife A. of furniture, &c.*, p. 1232; *and immediate legacy*, p. 1248; *Specific legacies to B. and C., the children*, p. 1230; *Gift of annuity to A.*, p. 1256; AND I DECLARE that the benefits hereby given to my wife shall be in full satisfaction and bar of all dower

Dower clause.

PREC. VI.

and free-bench which she may be entitled to claim out of any freehold, copyhold, or customary estates, of or to which I have been, am, or shall be, seized, possessed, or entitled: AND WHEREAS my brother B. is indebted to me in the sum of £——, for which I hold his promissory note: NOW I HEREBY EMPOWER my exor to postpone the calling in of such debt, or any other debt which may be owing to me from my said brother at the time of my decease, for such period as my exor may think proper, without taking security for the same, and without being responsible for loss. *Gift of residue to B. and C. equally*, p. 1269, *form* III.: BUT IF the sd C. shall survive me, and afterwards die under the age of twenty-one years, and without issue, then I DEVISE AND BEQUEATH the moiety of my real and residuary personal estate hereinbefore given to him to the sd B., his heirs, exors, admors, and assigns absolutely; AND IF either of them the sd B. and C. shall die in my lifetime without leaving issue surviving me, I devise and bequeath all the real and personal estate hereinbefore given to him, to the other of them, if he shall survive me, or shall die in my lifetime leaving issue surviving me, his heirs, exors, admors, and assigns absolutely: AND I DECLARE that if I shall die before the sd C. shall attain the age of twenty-one years, the sd B., or other the trustee or trustees of this my will, shall invest the personal estate hereinbefore bequeathed to the sd C. in or upon, &c., *investments*, p. 1049, *form* IV., V., *or* VI., with power to vary such investments at discretion: AND I DECLARE that during the minority of the sd C., the sd trustee or trustees shall take and retain possession, or receive the rents and profits of the real and leasehold hereditaments hereby devised to the sd C., and shall manage the same with the same powers in that behalf as if such trustee or trustees were absolutely entitled thereto: AND SHALL, after paying all outgoings and expenses, apply at discretion the whole or any part of the sd net rents and profits, and also the income of the sd investments of the personal estate hereinbefore

Power to exor to continue a loan.

Gift over on death of son under twenty-one,

and on death of either son in testator's lifetime.

Investment of share of minor.

Minority clause.

Maintenance.

bequeathed to him (subject to the payment of the sd annuity, or a proportionate part thereof), for the maintenance and education of the sd C., with power to pay the same to his guardian or guardians for that purpose, without seeing to the application thereof: AND THE SURPLUS of the sd rents, profits, and income shall be invested in manner aforesd, and shall accrue and be added to the personal estate hereinbefore bequeathed to the sd C., but so that such surplus, or the investments thereof, may be applied for the benefit of the sd C. in any subsequent year: I AUTHORIZE the sd trustee or trustees to raise by mortgage or sale any sum or sums, not exceeding in the whole the sum of £——, out of the real and personal property hereby given to the sd C., and to pay or apply the same for his advancement or benefit during minority, as the sd trustee or trustees shall think fit: AND I AUTHORIZE the sd trustee or trustees during the minority of the sd C., to demise the entirety of all or any of my real and leasehold hereditaments, &c., *continue leasing power*, p. 1318: AND I DECLARE that the sd trustee or trustees shall during the minority of the sd C. have a power of sale and exchange over the entirety of all the sd real and leasehold hereditaments: I AUTHORIZE my exors to purchase a Government Annuity of £—— in the name of my wife, to satisfy the annuity hereinbefore given to her. *Short trustee clause*, p. 1353, *form* VIII., *mutatis mutandis*: I APPOINT the sd B. sole exor and trustee of this my will. *Devise of trust and mortgage estates to B.*, p. 1354, *form* XIV.; *Appointment of A. guardian of C.*, p. 1356. IN WITNESS, &c.

PREC. VI.

Accumulation.

Advancement.

Power of leasing,

and of sale and exchange.

Power to purchase annuity.

VII.

PREC. VII.

WILL *disposing of* REAL *and* PERSONAL *property* WITHOUT *trust for* CONVERSION, INCOME *to* WIFE *for* LIFE *or* WIDOWHOOD. VARIOUS TRUSTS *for* CHILDREN *or* ISSUE.

PREC. VII.

Commencement, p. 1229 [*Confirmation of marriage settlement*, p. 1229]; *Bequest to wife of furniture and moveables and wine and consumable stores*, p. 1232; *Other specific legacies*, p. 1231; *Immediate pecuniary legacy to wife*, p. 1248, *form* VI.; *General legacies*, p. 1247; *Gift of realty and residuary personalty to trustees*, p. 1270, *form* VIII., *with the addition in note* (*c*): UPON TRUST that the sd trustees, or the survivors or survivor, of them, or the heirs, exors, or admors of such survivor, or other the trustees or trustee for the time being of this my will (hereinafter called my trustees) shall pay, &c., *Income to wife for life or widowhood*, p. 1278, *form* I., *inserting in this and the subsequent clauses the variations given in the notes for a mixed fund of real and personal estate* [*charged with maintenance of children*, p. 1281, *form* VII.]: AND AFTER the death [or marriage] of my sd wife shall stand possessed of the sd trust premises, and of the net rents, profits, and income thereof, [*Trust for children as widow shall appoint*, p. 1282, *form* I. *or* III.]: [*Proviso where wife's life interest is restricted to widowhood*, p. 1282, *note* (*c*)]: *Trust for children at twenty-one, &c.*, p. 1283, *form* IV., *or*, p. 1284, *form* V., [*for the form where daughters marrying without consent are absolutely excluded, see form* VI.; *where children dying in testator's lifetime are to be included, see* p. 1287, *form* XII.; *where the issue of children dying in testator's lifetime are to be substituted for the parents, see* p. 1288, *form* XV., *or* p. 1289, *form* XVIII.; *where the issue of children dying in the widow's lifetime are to be substituted for the parents, see* p. 1289, *form* XVII.; *where the children take unequally, see* p. 1291, *form* XXI. *or* XXII.; *where shares are given to any of the children by name, insert, if appropriate, the accruer clause*, p. 1306, *form* VIII.], [*Hotchpot*, p. 1293, *form* XXV.], [*Clause directing sums taken under marriage settlements or advances made by testator in his lifetime to be brought into account*, p. 1293, *forms* XXVI. *and* XXVII.]: [PROVIDED ALWAYS and I hereby declare that for the purpose of giving effect to the several provisions hereinbefore contained, *continue form in note*, p. 1293]; [*Special maintenance and ac-*

Trusts.

cumulation clause, p. 1315, *form* XIV.]; *Special advancement clause*, p. 1315, *form* XV.; *Ultimate trust in default of children, commencing as at* p. 1305, *form* IV., *or form* III. *or* V.; *Declaration as to income of property to be enjoyed*, p. 1276, *form* XII.; *Power to manage real and leasehold estates*, p. 1317, *form* I. *or* II., *with the variations, and to grant leases*, p. 1318; *Power to trustees to sell real and personal estate*, p. 1272, *form* V.; *Power to allot specific property in satisfaction of shares of residue*, p. 1273, *form* VI.; *Power to trustees to determine questions*, p. 1326, *form* XVII.; *Short trustee clause*, p. 1353, *form* VIII.; *Declaration as to devolution of trustees' powers*, p. 1354, *form* XII.; *Appointment of exors*, p. 1355; *Devise of trust and mortgage estates*, p. 1354; *Appointment of guardians*, p. 1356. IN WITNESS, &c. PREC. VII.

VIII.

WILL *of a* WIDOW *in favour of an* ONLY SON *who is a* MINOR, *with a* GIFT OVER *in case of his* DEATH UNDER AGE. SHORT FORM. PREC. VIII.

Commencement, p. 1229; *Bequest of jewellery and wearing apparel*, p. 1232; *Bequest of pecuniary legacies*, p 1247: I DEVISE AND BEQUEATH all the residue of my estate and effects whatsoever and wheresoever, and whether real or personal, to which I may be entitled at my decease under the will of my late husband or otherwise howsoever, or of which I may at my decease have power to dispose by will UNTO AND TO THE USE of, *trustees*, their heirs, exors, admors, and assigns, UPON TRUST, during the minority of my son A., TO APPLY the whole or any part, at the discretion of my trustees, of the annual produce and income of the sd trust premises for or towards the maintenance, education, or benefit of my sd son, or to pay the same for that purpose to his guardian or guardians, or the person or persons hereinafter

General devise and bequest.

Trusts.

Maintenance.

PREC. VIII.

Accumulation.

appointed his guardian or guardians (*a*), without seeing to the application thereof, AND TO ACCUMULATE the surplus (if any) of the same annual produce and income at compound interest, by investing the same and the resulting income thereof during my sd son's minority in any investments in which trust funds may be authorised by law to be invested, in augmentation, and so as to follow the destination of the capital of my sd residuary personal estate, but with power to apply the accumulations of any preceding year or years for the maintenance, education, or benefit of my sd son in

Advancement.

any succeeding year or years, AND WITH POWER also to my trustees in their discretion to apply any part of the capital of the sd trust premises for the advancement of my sd son during his minority in such manner as they may think

For son at twenty-one.

fit: AND I DECLARE that in case and when my sd son shall attain the age of twenty-one years, my trustees shall hold the sd trust premises, or so much thereof as shall not have been applied or disposed of under the preceding trusts, in trust for my sd son, his heirs, exors,

On his death under age.

admors, and assigns absolutely: BUT IF MY sd son shall die, whether in my lifetime or after my decease, under the age of twenty-one years, or shall die in my lifetime after attaining that age, but without leaving issue surviving me,

Sister for life.

then UPON TRUST from and after the death of the survivor of myself and my sd son, to pay the annual produce and income of the sd trust premises to my sister —— during

After her death.

her life, and after the death of the sd ——, UPON TRUST to

Legacies to sisters.

pay thereout the sum of £—— to each of my sisters —— and —— for her separate use, independently of her husband (if any), and to hold the ultimate residue of the sd trust

Ultimate trusts.

premises IN TRUST for ——, for her separate use, independently of her husband (if any) for the time being.

Power of sale.

Short powers of management and leasing if thought necessary, p. 1318: I EMPOWER my trustees at any time at their

(*a*) These words are inserted, as the appointment of guardians, being by the *mother*, is not legally valid.

discretion to sell any part or parts of the sd trust premises, and to invest the proceeds in any such investments as hereinbefore mentioned, and to transpose the investment thereof from time to time in like manner, *Declaration as to devolution of trustees' powers*, p. 1354, *form* XII.; *Appointment of exors*, p. 1355; *Devise of trust and mortgage estates*, p. 1354; *Appointment of guardians*, p. 1356. PREC. VIII.

IN WITNESS, &c.

IX.

WILL *containing bequest of* LEASEHOLDS *in trust for a* SISTER *of the testator and her* ISSUE, *and bequest of* PECUNIARY LEGACY *in trust for another* SISTER, *and her* ISSUE, *and disposing of residuary* REAL *and* PERSONAL *estate in trust for* CONVERSION, *the* INCOME *to be paid to the* TESTATOR'S BROTHER *for* LIFE, *with* TRUSTS *in remainder for the* BROTHER'S CHILDREN. PREC. IX.

Commencement, p. 1229; *Specific legacies*, p. 1230; *Bequest of leasehold house and land to trustees upon trust to pay outgoings*, p. 1237, *form* II., AND UPON FURTHER TRUST, during the life of my sister B., to pay the surplus or net rents and profits of the same premises to my sd sister, or permit or empower her to receive the same for her separate use, independently of any husband, and without power of anticipation, AND FROM AND AFTER her decease my trustees shall stand possessed of the sd leasehold premises, *for children or child of daughter*, "their, his, or her exors, admors, and assigns," *at twenty-one, &c.*, p. 1283, *form* IV.: AND IN CASE my sd sister shall have no child who shall attain a vested interest under the trusts hereinbefore contained, then in trust for such person or persons for such purposes and in such manner in all respects as

Bequest of leaseholds in trust for a sister and her issue.

And in default of issue for her appointees,

PREC. IX.

or to fall into residue.

the sd B. shall by deed or will appoint, and in default of and subject to any such appointment, the same premises still sink into and become part of my residuary estate [*or, if it is desired to exclude a husband, form* VI., p. 1305, *may be used*]: PROVIDED ALWAYS, and I direct that if at the decease of my sd sister any child of hers shall be under the age of twenty-one years, and in the case of a female unmarried, my trustees may apply all or any part of the net rents and profits of the presumptive share of such child in the sd leasehold premises for his or her maintenance, education, or benefit, and shall accumulate any unapplied portion thereof by investing the same in any investments hereinafter authorised for the benefit of the person or persons who may become entitled to the share from which the same shall have arisen, but with power to resort to such accumulations in any subsequent year, and apply the same for the maintenance or education of the child presumptively entitled thereto [*or, insert the fuller form of maintenance, &c., clause*, p. 1314, *form* XIII., *mutatis mutandis, and, if desired, advancement clause, form* XV.]; *Add also power to lease*, p. 1318, *form* III. *or* IV., *mutatis mutandis; And, if desired, a power of sale, which may be according to form* V., p. 1272, *mutatis mutandis, and declaring that the investments of the proceeds are to be held upon the like trusts as the leaseholds; Charitable legacies*, p. 1252; *General legacies*, p. 1247; *Bequest of money legacy to trustees*, p. 1247, *form* IV., UPON TRUST, that my trustees shall invest, &c., *Trust to invest and vary investments*, p. 1276, *form* XIII., *to pay income to testator's sister C. for life, for her separate use, &c.*, p. 1278, *form* I. [*If life interest in remainder is given to C.'s husband D., insert form* II., *for life interest determinable on bankruptcy, &c., see form* III. *or* IV.]: AND after the death of the sd C. [*or*, of the survivor of them the sd C. and D.], my trustees shall stand possessed of the sd sum of £——, and the investments representing the same, IN TRUST, &c., *for C.'s children* [*as C.* [*or, C. and D., or survivor*] *may appoint*, p. 1283,

Maintenance clause.

Bequest of legacy in trust for another sister, and her issue.

form II. *or* III., *in default of appointment for children*] *equally at twenty-one, &c., form* IV. [*Hotchpot clause,* p. 1293, *form* XXV.]; *Maintenance, &c., clauses,* p. 1309, *form* V.; *Ultimate trust of* "the sd legacy of £——, and the investments representing the same," p. 1305, *form* IV., *for C.'s appointees, and in default of appointment to fall into residue, as above* [*or, if it is desired to exclude a husband, form* VI., p. 1305, *may be used*]; *Annuities to servants, &c.,* p. 1256; *Specific devises,* p. 1262; *Gift of residuary realty and personalty to trustees,* p. 1270, *form* VIII.; *Upon trust for conversion,* p. 1272, *form* III.; *Trusts of proceeds for payment of debts, &c.,* p. 1275, *form* X.; *and for investment,* p. 1276, *form* XIII.; *Trusts for payment of income,* "subject to the annuities hereinbefore bequeathed," *to A. the brother for life,* p. 1278, *form* I.: AND AFTER the death of the sd A., shall stand possessed of the sd trust premises, and the income thereof (subject as aforesd), *Trust for A.'s children or issue, as he shall appoint,* p. 1283, *form* II. *or* III.; *Trust in default of appointment for A.'s children at twenty-one, &c.,* p. 1283, *form* IV., [*where the trust includes children of A., dying in testator's liftime, leaving issue, see* p. 1288, *form* XIII.; *where the trust is for the children of A. who survive him and the issue of those dying in his lifetime, see* p. 1289, *form* XVII., *and* p. 1290, *form* XIX.; *where the eldest son taking the estate is excluded, see* p. 1290, *form* XX.; *where the children take unequally, see* p. 1291, *form* XXI. *or* XXII.]; *Hotchpot,* p. 1293, *form* XXV. [*Maintenance, accumulation, and*] *advancement,* p. 1308; *Ultimate trust in default of A.'s children, commencing as in* p. 1305, *form* IV., *or form* III. *or* V.; *Direction as to income until conversion,* p. 1275, *form* XI. *The rest of this Precedent will be the same as Precedent* IV., *with the omission of the appointment of guardians.*

IN WITNESS, &c.

X.

PREC. X.

WILL *disposing of* REAL *and* PERSONAL *property, including* COPYHOLDS, *in trust for* CONVERSION: *The* WIFE *takes a* LIFE INTEREST *in the* WHOLE, DETERMINABLE *as to one* MOIETY *on her* MARRYING *again, with* REMAINDER *to* CHILDREN *at twenty-one, &c.* SETTLEMENT *of* DAUGHTER'S SHARES. *The* TRUSTS *of the* SHARES *being declared* TOGETHER.

Commencement, p. 1229; *Specific legacies*, p. 1230; *General legacies*, p. 1247; *Devise of copyholds to such uses as B., C., and D. trustees, shall appoint, and subject thereto all realty to trustees*, p. 1270, *form* VII.; *Bequest of personalty to trustees*, p. 1269, *form* V.: AND I DECLARE that my trustees shall hold the sd real and personal estate and premises hereinbefore devised and bequeathed to them upon the trusts and with and subject to the powers and provisions hereinafter declared and contained concerning the same, that is to say, *Trust for conversion*, p. 1272, *form* III.; *Trusts of proceeds of conversion to pay debts, &c.*, p. 1275, *form* X.; *Trust for investment*, p. 1276, *form* XIII.: AND SHALL pay the income of one moiety of the sd trust premises representing my sd residuary estate to my wife during her widowhood, and the income of the other moiety of the sd trust premises to my wife during her life, and so that during coverture, &c., *as in* p. 1279, *form* I.: AND SHALL stand possessed of such last mentioned moiety of the sd trust premises from and after the death of my sd wife, and of the sd first mentioned moiety thereof from and after her death or marriage which shall first happen, *Trust for children at twenty-one, &c.*, p. 1283, *form* IV.: PROVIDED ALWAYS, AND I DECLARE that my trustees shall retain the share in the sd trust premises hereinbefore given to any

Trusts.

Income.

Capital.

Settlement of daughters' shares.

PREC. X.

daughter of mine (*b*), &c., *First life interest to daughter for her separate use*, p. 1296, *form* III.; *Power of appointment among daughter's children, or issue*, p. 1296, *form* VII.; *Trust for daughter's children in default of appointment*, p. 1297, *form* VIII.; *Hotchpot clause*, p. 1297, *form* IX.; *Power to daughter to appoint a life interest to her husband*, p. 1298, *form* XIII.; *Ultimate trust of daughter's share for her testamentary appointees*, p. 1297, *form* X.; *In default of appointment for her next of kin*, p. 1297, *form* XI. [*Or to accrue to other shares*, p. 1298, *form* XII.]; *Proviso that share of daughter dying in testator's lifetime shall be held upon the same trusts as if she had survived him*, p. 1301, *form* XVII.; *Proviso that share of son dying in testator's lifetime shall be in trust for his children, at twenty-one, &c., and in default shall accrue to other shares*, p. 1301, *form* XVIII.; *Maintenance, accumulation, and advancement clauses*, p. 1311, *form* VII.; *Direction as to income until conversion*, p. 1275, *form* XI.; *Power to manage real and leasehold estate until sale*, p. 1317, *form* I. *or* II.; *and to grant leases*, p. 1318; *Power to allot specific property in satisfaction of shares of residue*, p. 1273, *form* VI.: PROVIDED ALWAYS, and I declare that during the lifetime of my sd wife no sale or investment or transposition of investment of any part of the sd trust estate and premises in which she shall for the time being be interested, shall be made without her consent in writing, and that after the death of my sd wife no sale or investment or transposition of investment of any part of the sd trust estate and premises which shall have been appropriated in or towards satisfaction, or as part of the share of any of my sd daughters in the sd trust estate and premises shall be made without the consent in writing of such daughter, if living, and of full age. *Power to trustees to determine questions*, p. 1326, *form* XVII.; *Power to appoint special trustees of daughters' shares*, p. 1350; *Short trustee clause*, p. 1353, *form* VIII.; *Declaration as to devolution of*

Proviso as to consent to investments.

(*b*) For the mode of declaring the trusts where the shares are settled differently, see the next Precedent.

PREC. X. *trustees' powers*, p. 1354, *form* XII.; *Appointment of exors*, p. 1355; *Devise of trust and mortgage estates*, p. 1354: [*Appointment of guardians*, p. 1356.]

IN WITNESS, &c.

XI.

PREC. XI.

WILL *of* REAL *and* PERSONAL *property in trust for* CONVERSION. *The beneficial trusts being for testator's* BROTHERS *and* SISTERS NOMINATIM, *and the* SHARES *being* SETTLED *on the donees and their issue, &c.* THE TRUSTS *of two shares are* IDENTICAL, *and of all the other shares are* DIFFERENT, *the* TRUSTS *being partly declared by* REFERENCE. ACCRUER *clause.*

Commencement, p. 1229; *Specific legacies*, p. 1230; *general legacies*, p. 1247; *Gift of residuary realty and personalty*, p. 1270, *form* VIII.; *on the usual trusts for conversion*, p. 1272; *Trust of proceeds for payment of debts, &c.*, p. 1275, *form* X.: AND SHALL stand possessed of the residue of the sd moneys in trust for my brothers and sisters, *naming them*, in equal shares: PROVIDED ALWAYS, and I declare that my trustees shall retain the share in the sd residuary moneys hereby given to the sd K., and shall with the consent in writing of the sd K., if living and of full age, or otherwise at their discretion invest such share in the names or under the legal control of my trustees in or upon, &c., *investments and power to vary*, p. 1049, *form* IV., V., *or* VI.: AND SHALL pay the income of the sd share and the investments representing the same to the sd K. during his life: AND AFTER the death of the sd K. shall stand possessed of the sd share and of the investments thereof, *Trust for children or issue of K. as he shall appoint*, p. 1283, *form* II. *or* III., *in default for his children at twenty-one, &c.* p. 1283, *form* IV.; *Hotchpot*, p. 1293, *form* XXV.: AND I DECLARE that my trustees

Trusts of share of one brother.

Of another

shall stand possessed of the share in the sd residuary moneys hereinbefore given to the sd L. and the investments and income thereof upon the like trusts and with and subject to the like powers and provisions in favour of my sd brother L. and his children and more remote issue, and otherwise, as are hereinbefore declared and contained concerning the share hereinbefore given to the sd K., and the investments and income thereof, in favour of the sd K. and his children and more remote issue, in the same manner in all respects as if such trusts, powers, and provisions were herein repeated with the substitution of the name of the sd L. for the name of the sd K.; *Similar trust of the share of another brother M.*, SAVE AND EXCEPT that in case the sd M. shall at any time alienate or charge, &c., *continue proviso determining life interest on bankruptcy, &c., and provision for application of income*, p. 1280, *form* v.: AND SAVE AND EXCEPT further, and I declare that after the determination or failure of the life interest of the sd M., and subject to the discretionary trust or power lastly hereinbefore contained, my trustees shall pay the income of his share and the investments thereof to X. his present wife, if surviving during her life; *Declaration that trustees shall retain the share of N. a sister upon trust for investment as above, saying*, "in or upon any of the stocks, funds, shares, and securities hereinbefore authorised as investments in the case of the share of the sd K., and may with such consent or at such discretion as aforesd vary or transpose such investments for others of the like nature:" AND SHALL, during the life of the sd N., &c., *life interest for separate use without anticipation*, p. 1296, *form* III.; *Second life interest to present husband*, p. 1296, *form* VI.; *Power of appointment among issue*, p. 1296, *form* VII.; *Trust in default for children at twenty-one, &c.*, p. 1297, *form* VIII.; *Hotchpot, form* IX.; *Declaration that trustees shall stand possessed of another share upon trusts in favour of O. another sister and her husband and issue similar to those in favour of N.*, "her husband and issue," *see above*, SAVE AND EXCEPT that from and after the death of the sd

PREC. XI.

brother by reference.

Of another brother. With variations.

Trusts of share of a sister.

Of another sister by reference.

With

PREC. XI. variations.

O. my trustees shall hold the sd share and the income thereof in trust for such person or persons and for such purposes as the sd O. shall, while discovert by deed revocable or irrevocable, or whether covert or discovert by will or codicil appoint, and that the trusts in favour of the husband and issue of the sd O. shall take effect only in default of and subject to any such appointment, *General maintenance, accumulation, and advancement clauses applying to all the shares*, p. 1310, *form* VI. : PROVIDED ALWAYS, and I declare that if any of my sd brothers and sisters shall die in my lifetime leaving issue living at my death, their, his, or her share shall be held upon and for the same trusts and purposes as if he or she had died immediately after my death, *Accruer clause*, p. 1298, *form* XII., *mutatis mutandis*, *saying*, "the share of any brother or sister of mine," "by way of addition to the share or shares of the other or others of my sd brothers and sisters;" *Declaration as to income until conversion*, p. 1275, *form* XI.; *The rest of the clauses may be as in Precedent* IV., *omitting the appointment of guardians and adding a power to appoint special trustees*, p. 1350, *form* III., "of the share or shares of any brother or sister of mine in the sd trust premises."

Provision in case of death of a brother or sister in testator's lifetime.

Accruer clause.

IN WITNESS, &c.

XII.

PREC. XII.

WILL *of* REAL *and* PERSONAL *property.* BEQUEST *of* BUSINESS, *or* SHARE *of* BUSINESS, *to* ELDEST SON. USUAL *trusts for* CONVERSION. TRUSTS *for payment of an* ANNUITY *to* WIDOW *and* ANNUAL SUMS *for benefit of an* IMPROVIDENT SON. *Subject thereto* TRUSTS *of* PROCEEDS *of* CONVERSION *for* CHILDREN OTHER *than the* ELDEST *Son and the* IMPROVIDENT *Son.* POWER *to* LEND *trust* FUNDS *to* ELDEST SON *to be* USED *in the* BUSINESS.

Commencement, p. 1229; *Specific legacies*, p. 1230; *General legacies*, p. 1247; *Bequest to eldest son of business or share in partnership*, p. 1240; *Gift of realty and residuary personalty to trustees*, p. 1270, *form* VIII.; *on trust for conversion*, p. 1272, *form* III.; *to pay debts, &c.* p. 1275: *to invest residue*, p. 1276, *form* XIII.: AND SHALL out of the income of the sd trust premises pay an annuity of £—— to my wife during her life, to commence from my death and be payable, &c., p. 1256, *form* I.: AND SHALL, subject to the payment of such annuity, stand possessed of the sd trust premises and the income thereof in trust for my children or child other than the sd K., *the eldest son*, and my son L., *the improvident son, at twenty-one, &c.*, p. 1283, *form* IV.: AND IF I shall have no child other than as aforesd who being a son attains the age of twenty-one years or being a daughter attains that age or marries, then in trust for the sd K., his exors, admors, and assigns, absolutely, *Maintenance, accumulation, and advancement*, p. 1311, *form* VII.; I AUTHORISE my trustees to lend to the sd K. for the purposes of the sd business any sum or sums of money not exceeding in the whole the sum of £—— out of the trust premises for such period as they may think proper, *continue as at* p. 1245, *form* VI., *mutatis mutandis, and omitting the final paragraph.* [*If K. is a trustee add*, PROVIDED ALWAYS that my trustees, other than the sd K., may call in and compel payment of the sd loan, as and when the same shall become payable, but nevertheless my trustees other than as aforesd shall not be in anywise responsible for loss occasioned by their omission or neglect to call in or compel payment of the sd loan or any part thereof]: PROVIDED ALSO, and I further authorise my trustees, if in their uncontrolled discretion they shall think fit, to raise out of the income, &c., *continue power to raise and pay annual sums for the benefit of L., the improvident son*, p. 1258, *form* VIII.; *Power to appropriate fund to answer annuity*, "and the sums of money for the time being raiseable under the power lastly hereinbefore contained,"

Annuity to wife.

Trusts of capital.

Power to lend trust funds to eldest son.

Trust for improvident son.

PREC. XII. *and afterwards saying,* "such annuity and annual sums," p. 1259, *form* x.; *Declaration as to income until conversion,* p. 1275, *form* XI.; *Power to manage real and leasehold estate,* p. 1317, *form* I. *or* II.; *and to grant leases,* p. 1318; *Power to trustees to determine questions,* p. 1326; *Short trustee clause,* p. 1353, *form* VIII.; *Declaration as to devolution of trustees' powers,* p. 1354, *form* XII.; *Appointment of exors,* p. 1355; *Devise of trust and mortgage estates,* p. 1354; *Appointment of guardians,* p. 1356.

IN WITNESS, &c.

XIII.

PREC. XIII. WILL *of a* PARTNER *disposing of* REAL *and* PERSONAL *property on the* USUAL TRUSTS *for* CONVERSION, *giving* POWERS *to* TRUSTEES *to join in* CARRYING ON BUSINESS, *and to make* ARRANGEMENTS *for* ADMISSION *of the testator's* SONS. THE PROPERTY *is held on the* USUAL TRUSTS *for the* WIDOW *and* CHILDREN, *with* SETTLEMENT *of the* SHARE *of an* IMPROVIDENT CHILD.

Commencement, p. 1229; *Specific legacies,* p. 1230; *General legacies,* p. 1247; *Gift of realty and residuary personalty to trustees,* p. 1270, *form* VIII.; *On trust for conversion,* p. 1272, *form* III.; *To pay debts,* p. 1275, *form* X.; *and to invest,* p. 1276, *form* XIII.; *Life interest to widow,* p. 1278, *form* I.; *Usual trust for testator's children at twenty-one,* p. 1283, *form* IV.; *Maintenance, accumulation, and advancement,* p. 1308, *forms* I., II., *and* III.;

Trusts of share of improvident son. PROVIDED ALWAYS, and I declare, that my trustees shall retain the share in the sd trust premises hereinbefore given to my son K., *the improvident son,* and shall, in their absolute discretion, *Trust for improvident son,* p. 1302, *form* XX., *saying,* "the sd share," *and omitting the ultimate*

trust, for which may be substituted the following: PROVIDED ALWAYS, and I declare that in the event of the failure or determination of the trusts and provisions hereinbefore declared and contained concerning the share of the sd K. in the sd trust premises, such share and the income thereof or so much thereof respectively as shall not have been applied or disposed of under the trusts and provisions aforesd, shall accrue, and be added to the share or shares of my other children or child in the sd trust premises, and if more than one, in equal shares and proportions. *Power to trustees to continue business*, p. 1242, *form* IV., *or* p. 1244; AND ALSO, *to make arrangements for admission of sons into business*, p. 1246, *form* VIII.: AND ALSO, *to reserve right of introducing younger sons at twenty-one*, p. 1247, *form* X.; *Declaration as to income until conversion*, p. 1275, *form* XI., *adding after the words*, "hereinbefore directed to be sold, called in, or converted," *the words*, "including the net profits arising from the sd business." *The rest of the clauses may be as in Precedent* IV. PREC. XIII.

IN WITNESS, &c.

XIV.

WILL *of a* TRADER *giving* POWER *to* TRUSTEES *to* CARRY ON BUSINESS, *with* OPTION *to* SONS *in Succession to* PURCHASE *it.* GIFT *of* RESIDUE *on* TRUSTS *for* CONVERSION, *and* USUAL TRUSTS *for* WIDOW *and* CHILDREN. VARIATIONS *where Some of the* SONS *are* MINORS. PREC. XIV.

Commencement, p. 1229; *Bequests of furniture, &c.*, p. 1232; *Immediate legacy to wife*, p. 1248, *form* VI.; *General legacies*, p. 1247. *Continue as in Precedent* IV., *adding, before the declaration as to income until conversion:* PROVIDED ALWAYS, and I declare that my sons shall have

PREC. XIV. the option in succession according to seniority, [*if any of the sons are minors, insert here,* "on attaining the age of twenty-one years,"], *continue form* IX., p. 1246. *If any of the sons are minors, add,* AND I AUTHORISE my exors to carry on my sd business until any son of mine shall have elected to succeed to it, or during such shorter period as they shall think fit, and for that purpose to retain or employ the capital which shall at my death, &c., *continue short form of power to carry on business,* p. 1244, *form* V., *omitting the words in brackets.*

IN WITNESS, &c.

XV.

PREC. XV. WILL *of a* TRADER *giving* BUSINESS *to* ELDEST SON CHARGED *with Benefits for* TESTATOR'S WIFE *and* CHILDREN WITHOUT TRUSTEES. DIRECTION *that the* SON *shall* SECURE *such* BENEFITS *by his* BOND *or* COVENANT. GIFT *of* RESIDUE *to* WIFE *absolutely.*

Commencement, p. 1229. *Bequest of business to the eldest son, A.,* p. 1240, *and appointment of him as special exor,* p. 1355, *form* VI. PROVIDED ALWAYS, and I declare that the bequest of the sd business and premises hereinbefore made to my sd son A. is so made on this express condition that my sd son, his exors or admors, shall pay to my wife during her life an annuity of £——, &c., p. 1256, *form* I., AND THAT in case I shall have any child or children other than the sd A., who being sons or a son attain the age of twenty-one years, or being daughters or a daughter attain that age or marry, the sd A. shall pay the sum of £—— to each such child by equal yearly instalments of £—— each, whereof the first is to be paid to each such son on his attaining the age of twenty-one years, and to each such daughter on her attaining the age of twenty-one years or marrying, which shall first happen, and a subsequent instal-

Bequest of business to son charged with payment of annuity to testator's wife,

and of capital sums to his younger children at 21, &c., by instalments.

ment is to be paid at intervals of a year until the sd principal sum of £—— shall be fully paid and satisfied: AND SHALL ALSO pay interest after the rate of £5 per cent. per annum on so much of such principal sum as shall for the time being remain unpaid, to commence from the day on which the first instalment of principal is to be paid, together with the instalments of the principal: AND SHALL ALSO during the minority of each son of mine, and the minority and spinsterhood of each daughter of mine, pay such sum or sums of money not exceeding for each child in any one year interest at the rate aforesd on his or her expectant portion as the guardians or guardian of such child shall require in writing, such sum or sums to be paid to such guardians or guardian and to be applied for the maintenance, education, or benefit of such child as they, he, or she shall think fit: AND SHALL ALSO pay to such guardians or guardian such further sum or sums of money not exceeding in the whole a moiety of the expectant portion of such child as they, he, or she shall require in writing, to be applied by them, him, or her, for the advancement or benefit of such child, but so that such last mentioned sum or sums shall be taken in part satisfaction of the expectant portion of such child, if the same shall become payable, and as a payment by anticipation pro tanto of the first instalment or instalments thereof: PROVIDED ALSO, and I declare that my sd son A., his exors or admors, shall within six calendar months after my death, at the expense of my estate, enter into a proper bond or covenant with my exors, and to their satisfaction, for securing the payment of the annuity and principal sums and interest and other moneys hereby directed to be paid by him or them unto or for the benefit of my wife, and my other children. *General legacies*, p. 1247; *Gift of residue to wife absolutely*, p. 1269, *form* III.; *Appointment of exors*, p. 1355; *and guardians*, p. 1356.

With interest.

Maintenance

and advancement

to be secured by bond or covenant.

IN WITNESS, &c.

XVI.

PREC. XVI.

WILL *of* REAL *and* PERSONAL *property* WITHOUT *any trust for* CONVERSION *and* DISPENSING *as far as may be with the intervention of* TRUSTEES, PROVIDING *for* WIFE NOT LEGALLY MARRIED *to the testator and his* ILLEGITIMATE CHILDREN *by her. Gift of* ANNUITY *to wife to be* REDUCED *on her* MARRYING *again. Gifts of real and personal estate to* CHILDREN NOMINATIM, *to* VEST IMMEDIATELY, *with* SUBSTITUTION *of* ISSUE *for children dying before testator, and* GIFT OVER *and* ACCRUER *as to* CHILDREN DYING *under twenty-one* WITHOUT ISSUE.

Commencement, p. 1229 ; *Specific legacy of furniture, &c.*, p. 1232 ; *Immediate pecuniary legacy to* "my wife A." (*a*), p. 1248, *form* VI. : I BEQUEATH to the sd A. during her life an annuity of £——, and so long as she shall remain unmarried an additional annuity of £——, such respective annuities to commence from my death, &c., *continue as at* p. 1256, *form* I. ; *Specific and pecuniary legacies and devises to children*, pp. 1230, 1250, 1262, *describing each child (when first mentioned) by name so as to identify it. Gift of residue to*, "my children hereinbefore named and any children or reputed children I may hereafter have by my sd wife A." (*b*), *as tenants in common*, p. 1269, *form* III. : PROVIDED ALWAYS,

Gift of annuities to wife.

Residue to children.

(*a*) There is no objection to so describing her (see *Lepine* v. *Bean*, L. R. 10 Eq. 160). In the absence of fraud on the part of the wife in concealing from the husband the circumstances which render the marriage invalid, a gift to her as wife will be good, *Pratt* v. *Matthew*, 22 Beav. 328 ; *Mcluish* v. *Milton*, 3 Ch. D. 27.

(*b*) Although "children," *primâ facie*, means lawful children, a bequest to "children," without a more specific description, has, in some cases (as in *Holt* v. *Sindrey*, L. R. 7 Eq. 170 ; *Savage* v. *Robertson*, id. 176 ; *Lepine* v. *Bean*, L. R. 10 Eq. 160 ; *Crook* v. *Hill*, L. R. 6 Ch. App. 311, 6 E. & I. Ap. 265 ; *Laker* v. *Holdern*, 1 Ch. D. 644), been held good in favour of existing illegitimate children, where a sufficiently strong indication of intention was apparent ; but there is considerable risk of a bequest to illegitimate children in such

PREC. XVI.

Substitution of issue for children dying in testator's lifetime.

Gift over and accruer as to children dying under twenty-one without issue.

and I declare that if any of my sd children shall die in my lifetime leaving issue living at my death (*c*), such issue shall take by substitution, if more than one in equal shares as tenants in common, all the property whether real or personal which such deceased child would have taken if surviving me under the respective devises and bequests contained in this my will: PROVIDED ALSO, and I further declare, that if any of my sd children shall die in my lifetime without leaving issue living at my death, or shall survive me and afterwards die without having attained the age of twenty-one years and without leaving issue living at his or her death, then all the property whether real or personal hereinbefore specifically devised and bequeathed, and also the pecuniary legacies bequeathed to the child so dying, shall, as from the time of the death of the survivor of myself and such child, sink into my

general terms failing (see instances of failure in *Dorin* v. *Dorin*, L. R. 7 E. & I. Ap. 568; *Paul* v. *Children*, L. R. 12 Eq. 16; *Re Ayles*, 1 Ch. D. 282), and the safe and proper course is, to designate the objects by naming them, or otherwise, so as clearly to identify them. It had been supposed that a gift by will to future born illegitimate children, whether of the testator himself, or another person, was wholly invalid, on the ground of public policy, but the contrary has been established by recent cases as to children born after the will in the testator's lifetime (*Occleston* v. *Fullalove*, L. R. 9 Ch. App. 147; *Re Goodwin*, L. R. 17 Eq. 345; *Crook* v. *Hill*, 3 Ch. D. 773.) Where the gift is to the future children of a man, or of a woman by a particular man, it is safer, in the present state of the authorities, if the gift is extended to after-born children, to say "children or reputed children," as in the text, having regard to the rule of law, that evidence of the paternity is not admissible (see the judgment of *Mellish*, L. J., in *Occleston* v. *Fullalove*). It seems, however, that where the gift is necessarily, from the circumstances of the case, to illegitimate children, as where a marriage between the parties is impossible, or where (as in this precedent) the gift is to the testator's own children, and would therefore be revoked by a marriage, the expression, "children," *simpliciter*, may be used, so as to avoid referring on the face of the will to the illegitimacy, and that effect would be given to such a bequest in favour of all children born in the testator's lifetime, and acknowledged and recognised by the putative father as his (see *Re Goodwin*, ubi sup.). It is established by the cases above referred to, that, if such a gift to a class fails as to some of the intended objects (as where it extends to children born after the testator's death), the whole fund will go to the remaining objects.

(*c*) As the children are illegitimate, a bequest to a child so dying would not, of course, be saved from lapse by the 33rd section of the Wills Act.

PREC. XVI.

residuary estate, and the share of my residuary estate whether real or personal hereinbefore given to such child, inclusive of any share accruing to him or her by virtue of this present provision, shall go and accrue to the others or other of my sd children or grandchildren to whom my residuary estate is hereinbefore given, if more than one in the same shares and proportions in which my residuary estate is hereinbefore made divisible, and be added to and devolve with their, his, or her original shares or share, *Special maintenance, accumulation, and advancement clauses*, p. 1315, *forms* XIV. *and* XV., *mutatis mutandis:* PROVIDED ALWAYS, and I declare, that my trustees shall invest every legacy and all moneys forming part of any share of my residuary personal estate hereby given to an infant at their discretion and in their names, &c., *investments and power to vary*, p. 1049, *form* IV., V., *or* VI., and shall transfer such investments to any person or persons of full age becoming absolutely entitled thereto; *Power to trustees to appropriate fund to answer annuities*, p. 1259; *To grant leases*, pp. 1318, 1319; *To sell real and personal estate*, p. 1272, *form* V.: AND ALSO at any time or times with the consent in writing of such of my sd children as shall then be living and of full age, or the majority in number of them, and if there shall be no such child at the discretion of my trustees to appropriate any part of my residuary estate whether real or personal in or towards satisfaction of any share thereof, with power for that purpose conclusively to determine values in such manner as they shall think fit, *Add proviso at end of form* VI., p. 1274, *mutatis mutandis; Power to trustees to determine questions*, p. 1326; *Short trustee clause*, p. 1353, *form* VIII.; *Declaration as to devolution of trustees' powers*, p. 1354; *Appointment of exors and trustees*, p. 1355; *Devise of trust and mortgage estates*, p. 1354; *Appointment of guardians* (*d*), p. 1356.

Investment clause.

Power to appropriate property specifically.

IN WITNESS, &c.

(*d*) Although this is not a valid appointment, effect would probably be given to it by the Court.

XVII.

PREC. XVII.

WILL *of* PERSONAL *property, and* REAL *estate situate* ABROAD, PROVIDING *for* WIFE *by a bequest in trust of a* LEASEHOLD HOUSE *and* FURNITURE, *and* LIFE ANNUITY. *Gift of* RESIDUE, *including property* ABROAD, *in trust for* CONVERSION, *the proceeds being* SETTLED *on the Testator's* MALE ISSUE (*e*), *with* POWER *to male* TENANTS *for* LIFE *to* CHARGE ANNUITIES *for their* WIDOWS *and* PORTIONS *for their* YOUNGER CHILDREN. ULTIMATE *Trust for Testator's* DAUGHTERS. POWER *to* SELL *the* HOUSE *and* FURNITURE, *and* PURCHASE *another* HOUSE *and* FURNITURE. *The beneficiaries are put to their* ELECTION *to* CONFIRM *the* DEVISE *of the* LAND ABROAD (*f*).

Commencement, p. 1229; *Specific legacies*, p. 1230; *Bequest of leasehold house and furniture to trustees for wife for life, with remainder to testator's eldest son K.*, p. 1238, *form* IV.; *Immediate pecuniary legacy to wife*, p. 1248, *form* VI.; *Legacy to testator's younger children at twenty-one, &c., with interim maintenance*, p. 1250, *form* XVII., *saying*, "each of my children, except the sd K."; *Bequest of annuity to wife for life*, p. 1256, *form* I.; *Direction to appropriate fund to answer it*, p. 1259, *form* X., *mutatis mutandis*; *Specific devises*, p. 1262; *Bequest of residuary realty and personalty to trustees*, p. 1270, *form* VIII., *saying*, "all my estates, situate in the colony of ——, and all other my real and immoveable estates and hereditaments

Residuary gift including colonial property.

(*e*) If the testator's real estate is in England, or in a colony where the English law of entail prevails, the scheme of settling the property on the eldest son would probably be best effected by devising the land in Strict Settlement, and giving the personalty on the trusts of the proceeds of a sale under the power, as in Precedent XXII.

(*f*) See also Precedents XVIII. and XIX., and p. 1396, note, as to wills affecting land abroad.

PREC. XVII.

of every tenure, including leaseholds, whether situate in the United Kingdom, or any colony or dependency thereof, or elsewhere abroad." *Trust for conversion*, p. 1272, *form* III. [*If K. is a trustee, insert power to him to purchase*, p. 1275, *form* IX.]: AND I DECLARE that my trustees shall, &c. *Trust of proceeds to pay debts, &c.*, p. 1275, *form* X.; *For investment of residue*, p. 1276, *form* XIII., "with the consent in writing of the person or persons of full age, if any, for the time being entitled to the income of the sd trust premises, and otherwise at the discretion, &c.:" AND SHALL pay the income of the trust premises, constituting or representing my sd residuary estate, to the sd K. during his life, AND AFTER HIS DEATH shall stand possessed of the sd trust premises, and the income thereof, in trust for such son of the sd K. as first or alone attains the age of twenty-one years, his exors, admors, and assigns absolutely; AND IF there shall be no such son of the sd K., then my trustees shall hold the sd trust premises, and the income thereof, upon trusts in favour of each of my sons in succession, according to seniority, and such son of his as shall first or alone attain the age of twenty-one years, similar to those hereinbefore declared in favour of the sd K., and such son of his as aforesd, but so that no younger son of mine, or any son of such younger son, shall be entitled under the trusts aforesd, until after the death of every elder son of mine, and unless every such elder son shall die without having a son, who either before or after his father's death attains the age of twenty-one years: PROVIDED ALWAYS, and I declare, that it shall be lawful for every son of mine hereby made tenant for life of the sd trust premises, either before or after he shall become entitled to the receipt of the income thereof in possession, but subject and without prejudice to the trusts and powers preceding his life interest, and to the trusts created in exercise of such powers, either before or after his marriage, by deed revocable or irrevocable, or by will or codicil, to appoint unto or for the benefit of his wife, in the event

Trusts.

Invest-ment.

Eldest son for life.

Remainder for his eldest son, &c.

Gift over to other sons of testator and their male issue in succession.

Power to each son to charge annuity for wife.

of her surviving him, for her life, or any less period, an annuity of £——, or any less annuity, to be charged upon all or any of the sd trust premises, and to be payable, without deduction except for legacy duty, at such times and in such manner as the son of mine exercising this present power may think fit: And I declare that the power lastly hereinbefore contained may be exercised as often as the son exercising the same shall marry: PROVIDED ALSO, and I declare, that it shall be lawful for every son of mine hereby made tenant for life of the sd trust premises either before or after he shall become entitled to the income thereof in possession, but subject and without prejudice to the trusts and powers preceding his life interest, and to the trusts created in exercise of such powers, either before or after marriage, by deed revocable or irrevocable, or by will or codicil, to charge all or any of the sd trust premises with the payment for the portion or portions of his younger child or children by such marriage, meaning thereby any child or children, who being a son or sons attain the age of twenty-one years, or being a daughter or daughters attain that age or marry (other than his first or only son who attains the age of twenty-one years), or the issue of any such younger child or children, such issue to be born and take vested interests within twenty-one years from the death of the son of mine exercising this power, of a sum or sums not exceeding in the whole £——, such sum to be an interest vested, &c., *continue as at top of* p. 1166, *down to the end of the form, mutatis mutandis, substituting* "the son of mine exercising this power," *for,* "the sd, *husband,*" *and* "legacy duty," *for,* "succession duty," *and omitting the references to the husband's father, and the power to limit a term. Proviso as to cases when charges of rent-charges or portions take effect,* p. 1168, *form* XXIX., *substituting* "annuity," *for,* "rent-charge," *and saying,* "become entitled in possession to the income of the sd trust premises." *Proviso limiting total amount chargeable for annuities and*

PREC XVII.

and portions for younger children.

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portions, p. 1168, *form* XXX., *mutatis mutandis*, *saying*, "have preference and priority according to the order of priority of the trusts in favour of the sons of mine, by whom the same respectively shall be charged:" PROVIDED ALWAYS, and I hereby declare, that in case the trusts hereinbefore declared of the sd trust premises representing my residuary estate shall fail or determine, then subject and without prejudice to the trusts and powers hereinbefore declared and contained, so far as the same shall take effect, my trustees shall stand possessed of the sd trust premises, and the income thereof, in trust for all or any the daughters of the sd K., who attain the age of twenty-one years or marry, and if more than one in equal shares: AND IF THERE shall be no such daughter of the sd K., upon trusts in favour of the daughters of each of my younger sons in succession, similar to those lastly hereinbefore contained in favour of the daughters of the sd K., but so that no daughter or daughters of any younger son of mine shall be entitled under the trusts aforesd, except in the event of the default or failure of daughters of every elder son of mine: AND IN CASE there shall be no such daughter as aforesd of any of my sons, then subject and without prejudice to the trusts and powers herein declared and contained, my trustees shall stand possessed of the sd trust premises in trust for all or any my own daughters or daughter who survive me, and attain the age of twenty-one years, or marry, or die in my lifetime leaving issue surviving me, and if more than one, in equal shares. *Maintenance, accumulation, and advancement clauses as to sons, and daughters, and grandchildren*, p. 1311, *form* VII., *mutatis mutandis:* PROVIDED ALWAYS, and I hereby declare, that in case any of the devises, bequests, or dispositions hereinbefore contained of real, or leasehold, or immoveable property, situate in the sd colony of ——, or elsewhere abroad, would but for this present proviso fail wholly or partially to take effect, owing to this my will being for any reason ineffectual to dispose of the same, the same shall take effect under the doctrine

Ulterior trust for daughters of eldest son of testator.

In default, for daughters of testator's younger sons.

Ultimate trust in default of issue of testator's sons for testator's daughters.

Clause putting beneficiaries to election as to foreign or colonial property.

of election in equity, and shall thereby bind my wife, and children, and grandchildren, and the husbands of any daughters or granddaughters of mine, who shall accordingly, at the request in writing and to the satisfaction of my trustees, and at the cost of my estate, and, as regards my children and grandchildren, as they shall respectively attain the age of twenty-one years, execute, complete, perfect, and do all such instruments and acts as may be necessary for evidencing such election, and giving full effect to such devises, bequests, and dispositions: And I declare that, in case my wife or any child or grandchild of mine or the husband of any daughter or granddaughter of mine shall refuse or neglect to comply with any such request in writing of my trustees, or shall otherwise fail to execute, complete, perfect, or do such instruments or acts as aforesd or any of them, then the person so neglecting or refusing, and his or her children (or in the case of the husband of a daughter or granddaughter of mine, such daughter, or granddaughter and her children), shall forfeit all benefits hereby, or by any codicil hereto, given to him, her, or them, and the same not being an interest in my residuary estate shall fall into my residuary estate, and being an interest in my residuary estate shall go to the other persons entitled to my residuary estate as if my wife, or child, or grandchild, incurring such forfeiture, had died before me, and in the case of a child or grandchild of mine, without issue, and had not taken any interest in my residuary estate under this my will. *Declaration as to income until conversion*, p. 1275, *form* XI.; *Power to grant leases*, p. 1318, *form* III., "of the real, leasehold, and immoveable property hereinbefore devised and bequeathed in trust for sale." *Power to raise money on mortgage*, p. 1323, *form* X.; *Power to appoint agents to get in or manage property abroad*, p. 1325, *form* XIV.; *Power to trustees to sell house and furniture bequeathed to wife for life*, p. 1326: And the money arising therefrom shall sink into my residuary estate, but so that my wife shall during

Power to sell house and furniture, with ancillary clauses.

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her life be entitled to the income arising from the same: PROVIDED ALWAYS, and I empower my trustees at any time, at the request in writing of my wife, to lay out any sum arising from a sale of the sd furniture and effects, or any part thereof, under the power lastly hereinbefore contained, in the purchase of furniture or household effects, to be held upon the like trusts as are hereinbefore declared concerning the furniture and effects bequeathed in trust for my wife for life, and also to lay out any sum arising from a sale of the sd leasehold premises hereinbefore bequeathed to her for life in the purchase of a messuage, &c., *continue power to purchase a house as residence for wife*, p. 1321, *mutatis mutandis, saying*, "upon the like trusts as are hereinbefore declared concerning the sd leasehold messuage hereinbefore bequeathed in trust for my wife for life, or as near thereto as circumstances shall admit." *Power to trustees to determine questions*, p. 1326, *form* XVII.; *Trustees' receipt clause*, p. 1349, *see note* (*e*); *Power to appoint new trustees*, p. 1349; [*Power to appoint special trustees of property abroad*, p. 1350; *Power to delegate trusts to resident trustees*, p. 1351, *form* IV.; *Declaration as to money received by resident trustees*, p. 1351, *form* V.]; *Trustees' indemnity and reimbursement clause*, p. 1352, *form* VI.; *Declaration as to devolution of trustees' powers*, p. 1354, *form* XII.; *Appointment of exors*, p. 1355; *Devise of trust and mortgage estates*, p. 1354; *Power to exors to compromise*, p. 1355, *form* VII.; *Appointment of guardians*, p, 1356.

IN WITNESS, &c.

XVIII.

PREC. XVIII.

WILL *of Man having* PROPERTY *in a* COLONY, *appointing* DISTINCT TRUSTEES *and* EXECUTORS *for* PROPERTY *in* ENGLAND *and the* COLONY, *and giving*

PREC. XVIII.

RESIDUE *in trust for* WIFE *during* WIDOWHOOD, *remainder as to a* FIXED SUM *for* DAUGHTER, *if* LIVING, *subject to her* MARRYING *with* CONSENT *of* MOTHER, *otherwise to her Issue.* RESIDUE *to a* SON, *if* LIVING. SUBSTITUTED *gifts to the* ISSUE *of the Son and Daughter, if dead at time of distribution.* CROSS TRUSTS *on* FAILURE *of the* PRIMARY *Trusts, and* ULTIMATE *Trust.* PROCEEDS *of* COLONIAL *property, after payment of expenses and debts there, to be* REMITTED *to* ENGLAND. POWER *to* COLONIAL TRUSTEES *on returning to England to* ACT *as* ENGLISH TRUSTEES. SPECIAL TRUSTEE *and* EXECUTORSHIP *Clauses.*

Commencement, p. 1229; *Specific legacies*, p. 1230; *Immediate pecuniary legacy to wife*, p. 1248, *form* VI.; *General legacies*, p. 1247; *Gift of realty and residuary personalty*, "except the real and personal estate and property in the Colony of ——, hereinafter devised and bequeathed to my colonial trustees, and except what I otherwise dispose of by this my will, or any codicil hereto," *to English trustees, A. and B.*, p. 1270, *form* VIII.; *Upon trust for conversion*, p. 1272, *form* III.; *To pay debts, &c.*, p. 1275, *form* X., "other than the debts owing by me in the sd colony, the payment whereof is hereinafter provided for, but inclusive of such debts in case and so far as such provision for the payment thereof shall be insufficient;" *For investment of residue*, p. 1276, *form* XIII.; *For payment of income to widow during widowhood*, p. 1278, *form* I.: AND AFTER the death or marriage of my sd wife, which shall first happen, shall raise out of the sd trust premises the sum of £——: AND I DECLARE that my trustees shall hold the sd sum of £—— upon the trusts and with and subject to the powers and provisions following (that is to say), UPON TRUST to pay the same to my daughter for her absolute benefit in case she shall be living at the death or marriage of my wife, or if my wife should die before me at my death (hereinafter

Gift of residue, except property in colony.

Trusts.

Income to wife during widowhood.

Trusts of fixed sum.

For daughter, if living, unless she marries without consent.

PREC. XVIII.

called the time of distribution), and shall be then unmarried or shall have married during my lifetime or after my death, with the prior consent or subsequent approval in the latter case of my wife, signified at any time before the death or marriage of my sd wife, and so that in the case of my sd daughter having married as aforesd the sd sum of £—— shall be for her separate use, and her receipt shall be an effectual discharge for the same: AND IN CASE my sd daughter shall have married during my lifetime or after my decease, with such consent or approval as aforesd and shall have afterwards died before the time of distribution, then in trust for the child or children of my sd daughter who shall be living at the time of distribution, and shall, being male, attain the age of twenty-one years, or being female, attain that age or marry, if more than one, in equal shares: BUT IN CASE my sd daughter shall marry after my death and during the widowhood of my sd wife without such consent or approval as aforesd, then upon trust, *for children or remoter issue of daughter as widow shall appoint*, p. 1283, *form* II. *or* III.: AND IN DEFAULT of and subject to any such appointment upon trust, whether my sd daughter shall be living or dead, for the child or children of my sd daughter who shall be living at the time of distribution or shall be afterwards born before the youngest of such children for the time being in existence attains a vested interest (*g*), and who being male attains the age of twenty-one years, or being female attains that age or marry, if more than one, in equal shares, BUT SO THAT during the life of my sd daughter the income of the sd trust premises shall be paid to the persons who would be entitled thereto, or applied in the manner and for the purposes in and for which the same would be applicable if she were dead. [*Provision as to distribution when daughter attains a certain age*, p. 1292, *form* XXIV., *mutatis mutandis*]: PROVIDED ALWAYS, and I declare, that if the sd sum of £—— shall not

Substitution of issue for daughter, if dead.

Gift over on marriage of daughter without consent to her children.

Subject to trusts aforesd to sink into residue.

(*g*) See above, p. 1285, note (*c*).

become absolutely vested under the trusts aforesd, then the sd sum of £—— and the income thereof, and all accumulations thereof, or so much thereof as shall not become vested or be applied under the trusts and powers herein declared and contained or by law vested in my trustees (*a*), shall, subject and without prejudice to the trusts and powers aforesd, sink into the residue of the sd trust estate and premises, and be subject to the trusts and provisions hereinafter declared and contained concerning the same: AND I HEREBY further declare that the residue of the sd trust estate and premises after raising the sd sum of £—— shall, from and after the death or marriage of my wife, or from and after my death, should she die before me, be held by my trustees upon the trusts and with and subject to the powers and provisions following, that is to say, IN TRUST for my son —— if he shall then be living for his absolute benefit, and in case he shall have died, then in trust for the child or children (if any) of my sd son who shall be then living and shall, being male, attain the age of twenty-one years, or being female, attain that age or marry, if more than one, in equal shares: AND IN CASE my sd son shall have died without leaving any such child or children, then (subject to the trusts hereinbefore declared) upon the like trusts and for the like purposes as those hereinbefore declared concerning the sd sum of £——: PROVIDED ALSO, and I declare, that if the sd trust premises, including the sd sum of £——, or any part or parts thereof, shall not become absolutely vested under the trusts hereinbefore declared, then the sd trust premises and all accumulations thereof, or such part or parts thereof as shall not have become vested or been applied under the trusts and powers herein declared and contained or by law vested in my trustees, shall (subject to the trusts hereinbefore declared) be held by my trustees in trust for my brother —— absolutely, if he shall be living at the time of the determination

Trusts of residue.

For son if living at time of distribution, if not, for his children.

Ultimate trusts.

(*a*) These words have reference to the Statutory power of maintenance, which is relied on in this will.

PREC. XVIII.

or failure of the prior trusts hereinbefore declared, and if he shall then have died leaving a child or children then living, then in trust for such child or children, if more than one, in equal shares, and in default of any such child or children then in trust for my cousin —— absolutely: PROVIDED ALWAYS that it shall be lawful for my trustees at their discretion to invest the sd sum of £——, or any part thereof, in or upon any of the investments hereinbefore authorised, with power at the like discretion to vary such investments, and the investments for the time representing the sd sum of £—— shall be held upon and for the like trusts and purposes as are hereinbefore declared concerning the sd sum of £——; *Power to allot specific property in satisfaction of*, "the sd sum of £—— or any part thereof," p. 1273, *form* VI.; *Advancement clause as to children and grandchildren*, p. 1309, *form* III., *mutatis mutandis* (*b*); *Declaration as to income of real and personal estate until conversion*, p. 1275, *form* XI.; *Power to manage and let until conversion*, p. 1318, *forms* II. *and* III.; I DEVISE AND BEQUEATH unto —— and ——, hereinafter called my colonial trustees, all my real and personal estate and effects situate and being at the time of my death in the Colony of ——, expressly including all debts and other choses in action which shall then be recoverable by action or other legal proceedings in such colony, upon the like trusts, and with and subject to the like powers and provisions with respect to the sale, conversion, and getting in of the same, and the management and leasing thereof until sale, as are hereinbefore declared and contained with reference to my general estate and effects hereinbefore devised and bequeathed to my trustees: AND I DIRECT that my colonial trustees shall stand possessed of the net proceeds arising from the sale, conversion, and getting in of the sd real and personal estate and premises hereinbefore devised and bequeathed to them, and of the

Investment clause.

Devise and bequest of colonial property.

Trusts.

(*b*) The maintenance and accumulation clauses are omitted, in reliance on the statute. If inserted, they may be according to forms I. and II., or form VI., *mutatis mutandis*.

net rents, profits, and annual income thereof until conversion, after payment thereout of all outgoings and expenses of management and realisation, or otherwise incurred by my colonial trustees, and any debts owing by me in the sd colony of —— at my decease, upon trust from time to time to remit such net proceeds, rents, profits, and income as and when the same shall be realized or received by them to my trustees, to be respectively held and applied by my trustees upon the trusts and in manner hereinbefore provided concerning the proceeds of the realisation of my general estate and the income thereof respectively, but not so as to increase or duplicate the sd sum of £——: I AUTHORISE my trustees, except as to any property which may for the time being be legally vested in my colonial trustees, and my colonial trustees as to such last-mentioned property, *continue power to determine questions*, p. 1323, *saying*, "my trustees or colonial trustees respectively:" AND I DECLARE that the receipt of my trustees and of my colonial trustees respectively, *continue trustees' receipt clause*, p. 1349, *mutatis mutandis; Power to appoint new trustees, with variations for several sets*, p. 1349, *saying, after* "incapable to act," "or as to my trustees or any of them reside abroad, or as to my colonial trustees or any of them cease to reside in the colony of ——:" PROVIDED ALWAYS, and I declare, that in the event of the sd —— and ——, *the colonial trustees*, or either of them, returning to England, whether in my lifetime or after my death, they or he shall, if willing, be at liberty to assume the general trusteeship of my will jointly with the other trustees or trustee for the time being (if any), or alone if there shall be no other trustees or trustee, in which case a deed shall be executed for evidencing their or his acceptance of such trusteeship, and vesting the trust estate in them or him, either jointly or alone as aforesd, *Trustees' indemnity and reimbursement clause*, p. 1352, *form* VI.; *Declaration as to devolution of powers of trustees*, p. 1354; *The same for colonial trustees; Appointment of colonial trustees*

Power to colonial trustees on returning to England to assume general trusteeship.

PREC. XVIII.

exors, "as to the property and premises hereinbefore bequeathed to them," *and of general trustees,* "and the sd, *colonial trustees,* if and when they shall respectively return to England," *general exors,* p. 1355, *form* VI., *omitting direction as to expense of limited probate:* I AUTHORISE my acting general exors or exor for the time being as to my general estate, and my acting special exors or exor for the time being as to my estate in the sd colony, *To compromise, &c.,* p. 1356; *Devise of trust and mortgage estates as to estates in the colony to colonial trustees, and as to all other estates to general trustees,* p. 1354; *Appointment of guardians,* p. 1356.

IN WITNESS, &c.

XIX.

PREC. XIX.

CONCURRENT WILL *disposing of* REAL ESTATE *in a* FOREIGN COUNTRY (*c*).

Commencement, p. 1229, *form* III.: I HEREBY DEVISE all my real and immoveable property including leaseholds

As to wills of property situate abroad.

(*c*) Where the testator is possessed of land situate in a colony or foreign country, or in Scotland, it may be necessary, or more convenient, to make a separate will as to such property. As to the practice of the Probate Court where there is a separate will of foreign property, see *Re Astor,* 1 P. D. 150. As to wills of Scotch property, see 1 Jarman on Wills, 3rd ed., p. 7; "The Titles to Land Consolidation (Scotland) Act, 1868," 31 & 32 Vic. c. 101, s. 20; and "The Conveyancing (Scotland) Act, 1874," 37 & 38 Vic. c. 94. Occasionally there may be doubts whether a testator is domiciled in England or abroad; and as the construction of a will of personalty and the rights of persons claiming under it is regulated by the law of the testator's domicile, it will be proper in this case to have the will settled both by an English and a foreign lawyer, so that it may take effect, whatever his domicile may be. See as to the form of the execution of a will of personalty by a British subject wherever domiciled, 24 & 25 Vic. c. 114. The construction of a will disposing of land is regulated by the *lex loci situs,* and, therefore, such a will should be settled by a lawyer conversant with the law of the place where the land is situate. In case, however, the testator is *in extremis,* so that there is no time to procure the assistance of a foreign lawyer, the better course appears to be, to make a short con-

situate in [the Republic of France] to K. of ——, and L. of ——, for all my estate and interest therein, and I hereby institute them my heirs in respect thereof UPON TRUST to sell the same and give effectual receipts for the purchase-money thereof and to let and manage the same in the meantime with the same discretionary powers as to the time and mode of sale and otherwise in relation thereto and as to the letting and management of the property as if they were absolute owners thereof, AND UPON TRUST to pay and remit the net proceeds of such sale and the net rents and profits in the meantime (after payment of all expenses and outgoings) to M. of ——, and N. of ——, or other my exors or exor for the time being in England to be held by them or him upon the trusts and for the purposes declared concerning the same by my will, bearing even date herewith. PREC. XIX.

IN WITNESS, &c.

XX.

WILL *of a* WIDOW *in favour of her* CHILDREN *or* ISSUE UNDER *a* POWER *of Appointment contained in her husband's Will, and declaring* TRUSTS *of her* OWN PROPERTY *by Reference.* PREC. XX.

Commencement, p. 1229. WHAS my late husband K. by his will dated, &c., and proved with a codicil on, &c., Recital of husband's will.

current will, disposing only of the foreign land, and in the principal will to put all persons to their election to confirm it (see the form of an election clause at p. 1388. The question whether the formalities necessary for the validity of a will disposing of land are those of the *lex loci actus* or the *lex loci situs*, is answered differently by the laws of different countries. The only safety, in the absence of special information, is to execute the will so that it will be valid in either case. It is apprehended that a holograph will, dated and signed by the testator (which is valid in most countries where the law is founded on the Civil Law) and executed in the presence of three witnesses, all signing at the same time in the presence of the testator and each other, so as to have been valid under the Statute of Frauds, would be valid in most countries.

PREC. XX.

directed that the trustees thereof should stand possessed of the investments thereby directed to be made of the proceeds of the sale calling in and conversion thereby directed to be made of his real and residuary personal estate and of the other money forming part of his estate, and of the income of such investments, and of the rents, profits, and annual produce of such real and personal estate until the conversion thereof, upon trust after my death for such one or more, &c., *continue recital of power of appointment among children or issue:* [AND WHAS the property now constituting or representing the residuary estate of my sd husband, and which is subject to the power of appointment vested in me as aforesd, consists of, &c.]: NOW IN EXERCISE of the sd recited power and of every or any other power in this behalf me enabling, I APPOINT AND DECLARE that the trustees or trustee for the time being of the sd will of my sd husband shall from and after my decease stand possessed of the moneys, stocks, funds, securities, and property representing or constituting the residuary real and personal estate of my sd husband or the proceeds of the sale calling in and conversion thereof, and of the income and annual produce thereof, upon the trusts and with and subject to the powers and provisions hereinafter declared and contained concerning the same, that is to say, *trusts for children or issue, see Prec.* IV. (*d*); *Maintenance, accumulation, and*

Investments of his residuary estate.

Appointment.

(*d*) In wills exercising special powers of appointment, care must be taken not only to keep within the power as regards the objects in whose favour the appointment is made, but also to avoid transgressing the rule against perpetuities, either as regards the objects of the appointment, or the period at which their interests are to vest; the test as to the latter point being, whether the appointment, if inserted in the instrument creating the power, would have been within the legal limits. The ordinary forms of trusts for children and issue are for the most part (subject to the above remarks) adapted to appointments under powers, the trustees of the instrument creating the power being substituted for the trustees of the will; but if it is desired to provide for the event of a child dying in the lifetime of the appointor, this cannot be done by an appointment to the deceased child, or its representatives (the 33rd section of the Wills Act not applying to appointments under special powers), and the only course in such a case will be, to appoint a share to the issue of the deceased child (if they are objects of the

advancement clauses, p. 1308, *forms* I., II., *and* III., *mutatis mutandis, and substituting* "the trustees or trustee of the sd will of my sd husband," *for*, "my trustees," *Specific legacies*, p. 1230; *General legacies*, p. 1247; *Gift of residue to trustees of will*, p. 1270, *form* VIII.; *Upon trust for conversion*, p. 1272, *form* III.; *To pay debts, &c.*, p. 1275, *form* X.; *For investment of residue*, p. 1276, *form* XIII.: AND SHALL stand possessed of my sd residuary trust estate and the income thereof upon the like trusts and with and subject to the like powers and provisions as are hereinbefore declared and contained concerning the sd trust premises representing or constituting the residuary estate of my sd late husband, with the substitution of my trustees for the trustees of his will: PROVIDED ALWAYS, and I declare, &c., *ultimate trusts of residuary estate*, p. 1305; *Declaration as to income until conversion*, p. 1275; *The rest of the Precedent may be as in Precedent* IV., *including the appointment of guardians* (*e*).

PREC. XX.

Trusts of residue by reference.

IN WITNESS, &c.

XXI.

WILL *of a* MARRIED WOMAN UNDER *a* POWER *in her marriage Settlement in favour of her* HUSBAND. *A* SHORT *form.*

PREC. XXI.

THIS IS THE LAST WILL of me, A., the wife of B. of, &c.: IN EXERCISE of a power contained in an indre

power) by substitution, or to leave the share unappointed, so as (if the case admits of it) to devolve on the representatives of the deceased child under the trust in default of appointment, with the aid of the hotchpot clause. Sometimes, however, an appointment in excess of the power may be made effectual, by giving benefits to the objects of the power, and putting them to their election to confirm it. A will exercising a power must be executed in the usual manner, although special formalities may be required by the power, see 1 Vic. c. 26, s. 10.

(*e*) Although a woman cannot legally appoint a guardian to her children, save by delegation from their father, still, where the father has expressed no wish, the court will regard her wishes as deserving of great attention, *Re Kaye*, L. R. 1 Ch. App. 387.

PREC. XXI.

dated, &c., being a settlement executed on my marriage with the sd B., and of every other power hereunto me enabling, I appoint and direct that in case there shall be no child of my marriage with the sd B. who being a son shall attain the age of twenty-one years, or being a daughter shall attain that age or marry, then the trustees or trustee for the time being of the sd indre of settlement shall from and after my decease, or such default or failure of our issue, which shall last happen, and subject to the trusts and powers of the sd settlement and to every exercise of such powers, stand possessed of the stocks, funds, securities, and property representing the sum of £——, *or*, "the trust funds and premises" thereby settled [and all property becoming subject to the trusts of the sd settlement by virtue of the provision therein contained for the settlement of my other and after acquired property] IN TRUST for the sd B., his exors, admors, and assigns, absolutely: AND I DEVISE, bequeath, and appoint all other property whether real or personal belonging to me for my separate use or over which I shall at the time of my death have any absolute power of appointment or disposition by will unto the sd B., his heirs, exors, admors, and assigns absolutely, *Appointment of B. as exor*, p. 1355.

IN WITNESS, &c.

XXII.

PREC. XXII.

WILL *devising* FREEHOLDS, COPYHOLDS, LEASEHOLDS, *and* HEIRLOOMS *to the Testator's Issue in* STRICT SETTLEMENT, *and* BEQUEATHING *the* RESIDUARY PERSONALTY *on the trusts declared of the* PROCEEDS *of a* SALE *of the real estate.* A FULL *form.*

Devise of freeholds.

Commencement, p. 1229; *Specific devises*, p. 1262: I DEVISE all my freehold manors, lordships, reputed manors

or lordships, messuages, farms, lands, tithes, rents, advowsons, tenements, and hereditaments, situate, arising, and being in the several parishes, towns, villages, hamlets, and territories of, &c., or elsewhere, in the several counties of &c., with their, and every of their rights, royalties, members, and appurtenances, and all other estates and hereditaments of freehold tenure, not otherwise disposed of by this my will, or any codicil hereto, of or to which I may at my decease be seized, or entitled, or over which I may have any absolute power of disposition exercisable by will [*or*, all my freehold estates and hereditaments whatsoever and wheresoever, not otherwise disposed of], [UNTO B., of, &c., and C., of, &c., and their heirs, to the uses, upon the trusts, and with and subject to the powers and provisions hereinafter limited, declared, and contained concerning the same, that is to say], TO THE USE, &c. *Limitation to trustees for term of* 1000 *years*, p. 1329, *form* IV.; *Limitation of rent-charge to wife*, "in bar of dower and freebench," p. 1331; *Powers of distress and entry*, p. 1149; *Limitation of term of* 200 *years to trustees*, p. 1329; *Limitations in strict settlement to testator's sons and their issue male*, p. 1334, *form* XVII. [*Limitations to testator's daughters, and their issue male*, p. 1335, *form* XVIII.]; *Limitations in remainder to the issue general of testator's sons*, p. 1335, *form* XIX.; *Limitations in remainder to daughters and their issue*, p. 1337, *form* XX., [*If the limitation to the daughters and their issue male, form* XVIII., *is inserted, as above, substitute for the last limitation*, "To THE USE that the issue of my respective daughters in succession, according to the seniority of such daughters, shall take estates similar to and with the same order and priority as those hereinbefore limited to the use of the issue of my respective sons in remainder after the default or failure of issue male of all my daughters, in the same manner in all respects as if the uses hereinbefore limited to or in favour of the issue of my respective sons in remainder as aforesd were repeated with the necessary verbal alterations and the substitution of my daughters for my

Limitations to issue of testator's daughters by reference to the limitations to the issue of his sons.

PREC. XXII.

SONS, WITH REMAINDER "]: *Ulterior limitations (if any), which can readily be framed from the forms at* pp. 1330 *to* 1337; *Ultimate remainder* "To THE USE of my own right heirs for ever." [PROVIDED ALWAYS, and I declare, &c., *Name and arms clause*, p. 1152, *mutatis mutandis* (*f*)]. *Trusts of term of* 1000 *years to pay debts and legacies*, "in case of deficiency of" *personal estate*, p. 1340 (*g*): AND I DECLARE, &c., *Trusts of term of* 200 *years to secure jointure rent-charge*, p. 1155, *mutatis mutandis*: AND UPON FURTHER TRUST that the sd trustees or trustee shall, *continue trusts of term for raising portions for testator's younger children*, p. 1339; *Power to jointure*, p. 1341, *and for female tenants for life to limit rent-charges to husbands*, p. 1342; *Power to charge portions*, p. 1342: PROVIDED ALWAYS, and I declare, &c., *Proviso that a charge of a rent-charge or portions shall not take effect unless the person charging the same or his or her issue becomes entitled in possession*, p. 1168, *mutatis mutandis*: PROVIDED ALSO, and I declare that, &c., *Proviso limiting total amount chargeable for rent-charges and portions*, p. 1168, *mutatis mutandis; Power to manage during minorities*, p. 1342, *or*, p. 1170, *form* XXXIV., *mutatis mutandis; Power to lease for twenty-one years*, p. 1343, *form* XXXIII., *or* XXXIV.; [*To grant building, &c., leases*, p. 1175 (*a*); *To accept surrenders of leases*, p. 1178 (*b*); *To make agreements for leases*, p. 1180, *mutatis mutandis* (*c*); *If there is a limitation to tenants in common add*, PROVIDED

(*f*) If the name and arms clause is inserted, the variations given in the notes to the forms for that case will be introduced.

(*g*) If there is only one set of trustees, the expression "my trustees" may be used throughout, instead of "the sd trustees or trustee," see p. 1354, note (*f*).

(*a*) For a mining property, insert here, Power to grant mining leases, p. 1176, and leases of easements, p. 1177, *mutatis mutandis*.

(*b*) For a building estate, insert here, Power to lay out property for building, p. 1178; for a mining or building estate, Power to accept leases of easements, p. 1179, *mutatis mutandis*.

(*c*) If a manor is settled, insert here, Power to grant licenses to copyholders, p. 1180, *mutatis mutandis*.

ALWAYS, and I hereby declare, that the several powers, &c., *continue proviso as to powers of leasing, &c.*, p. 1181, *form* XLV.]; *Commencement of powers of sale, &c.*, p. 1345, *form* XXXVI.; *Power to sell and exchange, &c.*, p. 1183 (*d*); *Power to sell subject to conditions*, p. 1185; [*If desired, Power to raise money on mortgage*, p. 1185 (*e*)]; *Power to execute assurances, &c.*, p. 1187; [*If there is a limitation to tenants in common add provision as to exercise of powers of sale, &c.*, p. 1187, *mutatis mutandis*]: PROVIDED ALWAYS, and I declare, &c., *continue declaration as to rents reserved on exchanges, &c.*, p. 1188: AND I HEREBY declare, &c., *Trusts of sale moneys, &c.*, p. 1189, *mutatis mutandis* (*f*); *Devise of copyholds, and bequest of leaseholds, on trusts corresponding with uses of freeholds*, p. 1347: I BEQUEATH my service of plate, marked with the —— crest, *or*, "my collection of oil paintings," *or*, "all the plate, furniture, linen, china, glass, and articles of household use or ornament, prints, pictures, busts, statues, bronzes, marbles, vases, antiquities, books, and manuscripts, which shall be in, about, or belonging to my mansion house of ——, [*or*, principal place of residence] [or the gardens or pleasure grounds thereof], at the time of my decease (except such articles as from their trifling value, or unimportant or perishable nature, my trustees shall consider to be unsuitable for heirlooms)," *or as the case may be* (*g*), UNTO THE sd, *trustees*, their exors, admors, and assigns,

PREC. XXII.

Heirlooms.

(*d*) If an undivided share is settled, add Power to partition, p. 1183, form XLIX.; if there are minerals, Power to sell, &c., surface and minerals separately, p. 1183; in a settlement of a manor, Power of enfranchisement, p. 1184; for a building or mining estate, Powers to grant and purchase easements, &c., pp. 1184, 1185, *mutatis mutandis*. Add also, if desired, Power to grant easements, &c., to local authorities, p. 1346. If brevity is desired, substitute the short Power of sale and exchange, p. 1346, for the full power and the subsidiary clauses.

(*e*) In a settlement of an undivided share, add Power to concur with co-owners, &c., in selling, p. 1186.

(*f*) Add, if desired, Power to trustees to lay out money in improvements, p. 1193, *mutatis mutandis*.

(*g*) Care should be taken not to include in a gift of heirlooms articles of an unimportant nature.

PREC. XXII.

upon trust, &c., *continue trust of chattels as heirlooms by reference to the limitations of the devised estates*, p. 1195, *form* LXVII., *mutatis mutandis; Other specific bequests*, p. 1230; *Immediate legacy to wife*, p. 1248; *General legacies*, p. 1247; *Bequests of annuities*, p. 1256; I BEQUEATH all my personal estate and effects whatsoever and wheresoever, except what I otherwise dispose of by this my will or any codicil hereto, subject to and after payment of my funeral and testamentary expenses and debts, and the legacies and annuities bequeathed by this my will or any codicil hereto, and the legacy duty on any legacies or annuities bequeathed free of duty, unto the sd, *trustees*, their exors and admors, upon the trusts and with and subject to the powers and provisions which would be applicable thereto if the same had arisen from a sale of the freehold hereditaments hereby devised in strict settlement under the power of sale hereinbefore contained: *Power to trustees to determine questions*, p. 1326; *Short trustee clause*, p. 1353, *form* VIII., [*or, Trustees' receipt clause*, p. 1349; *Power to appoint new trustees*, p. 1349, *and Trustees' indemnity and reimbursement clause*, p. 1352, *in full*]; [*Declaration as to devolution of trustees' powers*, p. 1354, *form* XII.]; *Appointment of exors*, p. 1355; *Devise of trust and mortgage estates*, p. 1354; *Appointment of guardians*, p. 1356.

Bequest of residuary personal estate.

IN WITNESS, &c.

XXIII.

PREC. XXIII.

WILL *giving* FREEHOLDS, COPYHOLDS, LEASEHOLDS, *and* HEIRLOOMS *to Testator's issue in* STRICT SETTLEMENT *in the* MALE *line. A* SHORT *form.*

Commencement, p. 1229. I DEVISE all my freehold hereditaments to the use of, *trustees*, their exors, admors, and assigns, for the term of 1000 years, to commence from my

Limitation of term to trustees.

death, WITH REMAINDER to the use of my sons severally and successively according to seniority for life, WITH AN immediate remainder after the death of each of my sons TO THE USE of his sons severally and successively according to seniority in tail male WITH REMAINDER to the use of my own right heirs : AND I DECLARE that the estate of every tenant for life hereunder shall be without impeachment of waste : PROVIDED ALWAYS that if any grandson of mine hereby made tenant in tail male by purchase shall be born in my lifetime his estate in tail male shall not take effect, and in lieu thereof I devise the sd hereditaments to the use of such grandson for his life, with remainder to his sons severally and successively according to seniority in tail male : I DECLARE that the sd, *trustees*, and the [survivors and] survivor of them, and the exors or admors of such survivor or other the trustees or trustee for the time being of this my will, hereinafter called my trustees, shall stand possessed of the sd term of 1000 years upon trust by and out of the rents and profits of the sd premises, or by the sale of timber or minerals, or by mortgage of the sd premises or any part thereof for all or any part of the sd term, to raise the annual and gross sums following, and to pay and apply the same in manner hereinafter mentioned, that is to say, FIRST, in case of deficiency of my personal estate such sum as may be sufficient for discharging my funeral and testamentary expenses, debts, and legacies, but so that no mortgagee or purchaser shall be bound to enquire whether such deficiency exists, and that the declaration in writing of my trustees that no further sum can be required to be raised under this present trust shall be conclusive in favour of the reversioners : SECONDLY, an annuity of £—— commencing from my death, to be paid to my wife K. if surviving during her life on the usual quarter days in bar of dower and freebench : THIRDLY, the sum of £—— for each child of mine who being a son attains the age of twenty-one years, or being a daughter attains that age or marries, except any son or sons who before attaining the age of twenty-one years

Testator's sons for life.

Grandsons in tail male.

Proviso cutting down estates of tenants in tail born in testator's lifetime.

Trusts of term.

To raise money to pay debts, &c.

Jointure for wife.

Portions for testator's younger children.

PREC. XXIII.

Jointures for widows of tenants for life.

Portions for younger children of tenants for life.

Maintenance of younger children of testator and tenants for life.

shall become entitled to the first estate of freehold under this my will: FOURTHLY, such annual sum not exceeding the sum of £—— as any person hereby made tenant for life who or whose issue shall become entitled to the first estate of freehold in possession under this my will shall by deed revocable or irrevocable or by will appoint to be paid to his widow for her life or any less period, on such days and in such manner as he shall appoint: FIFTHLY, such sum not exceeding the sum of £——, as any person hereby made tenant for life who or whose issue shall become entitled to the first estate of freehold in possession under this my will shall by deed revocable or irrevocable or by will appoint to be raised after his death or in his lifetime with his consent in writing, and to be held in trust for all or any to the exclusion of the others or other of his children or remoter issue other than any son or sons who before attaining the age of twenty-one years shall become entitled whether in possession or remainder to the first estate in tail male under this my will, if more than one in such shares and in such manner in all respects as the person making such appointment as last aforesd shall by the same or any other deed revocable or irrevocable or by will or codicil appoint, and in default of and subject to any such appointment in trust for all or any his children or child other than as aforesd who being a son or sons attain the age of twenty-one years, or being a daughter or daughters attain that age or marry, if more than one in equal shares, and subject to the trusts aforesd the sd sum of £——, or such smaller sum as shall be appointed or so much thereof as shall not become vested under the sd trusts shall sink into the estate and not be raised: SIXTHLY, such annual sum for the maintenance, education, or benefit of each child, grandchild, or great-grandchild of mine, who, if of full age, would be immediately entitled to a portion, as my trustees shall think fit, such annual sum not to exceed interest at the rate of £4 per cent. per annum on such portion, and to be so applied by my trustees or to be paid by them to the guardians or

guardian of such child, grandchild, or great-grandchild, for such purpose without seeing to the application thereof: SEVENTHLY, such sum not exceeding a moiety of the expectant or presumptive portion of any child of mine as my trustees shall think fit, to be applied for the advancement or benefit of such child in such manner as my trustees shall think fit, and to be treated as part of the portion of such child, in case he or she shall become entitled thereto: AND EIGHTHLY, such sum not exceeding a moiety of the expectant presumptive or vested portion to which any grandchild or great-grandchild of mine would, if of full age and if his or her father or grandfather to whom a life estate is hereinbefore given were dead, be immediately entitled, as such father or grandfather shall during his lifetime in writing direct or as my trustees shall after his death think fit, to be raised after the death of such father or grandfather or in his lifetime if he shall so direct in writing, and to be applied for the advancement or benefit of such grandchild or great-grandchild of mine in such manner as his or her father or grandfather shall during his lifetime or my trustees shall after his death think fit, but so that if any such advance shall be made an equal part of the sd sum of £—— or of such smaller sum as shall be charged for the portions of the child, children, or remoter issue of such father or grandfather shall sink into the estate and shall not be raised: AND I DECLARE, &c., *continue Proviso as to surplus rents of term*, p. 1160, *clause in brackets at end of form* XX., *mutatis mutandis; Proviso limiting total amount chargeable for annuities and portions*, p. 1168, *form* XXX., *mutatis mutandis, and substituting*, "annuities," *for*, "rent-charges;" *Short form of minority clause*, p. 1342, *form* XXXI.: I EMPOWER every tenant for life in possession under the limitations of my will, and my trustees during the minority of any tenant for life or in tail male by purchase in possession, to grant, &c., *Continue short power of leasing by reference to Settled Estates Act*, p. 1344; I DECLARE that my trustees shall have a power of sale and exchange, &c., *Continue short*

PREC. XXIII.

Advancement of younger children of testator.

Advancement of younger children of tenants for life.

Power of leasing.

Power of sale and exchange.

PREC. XXIII.

Partition.

Gift of copyholds and leaseholds.

H irlooms.

Heirlooms and leaseholds not to vest in tenant in tail by purchase under twenty-one.

power of sale and exchange, p. 1346 : AND I DECLARE that for the purposes of my will a partition shall be deemed to be an exchange or sale and exchange as the case may be : I DEVISE AND BEQUEATH all my copyholds and customary hereditaments, and all my leasehold hereditaments, whether held for lives or for terms of years, unto and to the use of the sd A. and B., their heirs, exors, admors, and assigns, respectively [(*a*) UPON TRUST out of the rents and profits thereof, or by raising money on mortgage thereof, to pay the rents and fines and perform the covenants subject to which the same may respectively be holden, and to renew at the usual periods the leases or grants of such of the sd hereditaments as may be held under leases or grants for lives, or for years usually renewable, and subject as aforesd] UPON SUCH TRUSTS and subject to such powers and provisions as will most nearly correspond with the uses, trusts, powers, and provisions herein declared and contained concerning my freehold hereditaments, but not so as to increase or multiply charges : I BEQUEATH unto the sd, *trustees*, their exors and admors, *Heirlooms, see last Precedent*, UPON TRUST to allow the same to devolve as heirlooms, together with the sd mansion house at ——, as far as the rules of law and equity will permit : BUT I DIRECT that the sd heirlooms, and such of the leasehold hereditaments hereinbefore bequeathed as are held for years, shall not vest absolutely in any person hereby made tenant in tail male by purchase who shall die under the age of twenty-one years, but shall on his death under that age devolve as if the same had been freeholds of inheritance hereby devised in strict settlement. *Other specific legacies*, p. 1230 ; *General legacies*, p. 1247 ; *Gift of residuary personalty to trustees*, p. 1269, *form* V. ; *Upon trust for conversion*, p. 1271, *form* I. ; *Payment of debts, &c.*, p. 1275, *form* X. : AND SHALL apply the residue of the same moneys, as if the same had arisen from a sale of the freehold hereditaments hereinbefore

(*a*) The part in brackets may usually be omitted.

devised in strict settlement under the power of sale hereinbefore contained. *Short trustee clause*, p. 1353, *form* VIII.; *Declaration as to devolution of trustees' powers*, p. 1354, *form* XII.; *Appointment of exors*, p. 1355; *Devise of trust and mortgage estates*, p. 1354; *Appointment of guardians*, p. 1356. PREC. XXIII.

IN WITNESS, &c.

XXIV.

PREC. XXIV.

WILL *devising* REAL ESTATE *in* STRICT SETTLEMENT *for securing* RENT CHARGE *to Testator's* WIFE, *in augmentation of her jointure, and subject thereto as to* PART *of estates to a* SON, *and his* WIFE *and* ISSUE, *and as to the* REMAINDER *to a* DAUGHTER, *and her* HUSBAND *and* ISSUE, *with* CROSS LIMITATIONS *on failure of the primary limitations.* ULTERIOR LIMITATIONS *of* PART *of estates by* REFERENCE *to the limitations of the other part.* LIMITATION *of a* TERM *in* PART *of the estates in trust to* RAISE MONEY *to* PAY MORTGAGE *and other* DEBTS *in aid of personalty, and a* SUM *to be at the Testator's* WIFE'S DISPOSAL *by* WILL. DEVISE *of land to* GO WITH ESTATES *devised by a* FORMER TESTATOR.

Commencement, p. 1229: I DEVISE all the messuages, farms, lands, and hereditaments, situate, &c., which I purchased of ——, with the appurtenances thereof, to such and the same person and persons, for such and the same estate and estates, and subject to such and the same powers and provisions, as the hereditaments, known as the —— estate, situate, &c., were devised by the will of ——, to the intent that the sd lands and hereditaments so purchased by me as aforesd, may from and after

Devise of lands

to go with settled estates.

PREC. XXIV.

General devise of freeholds.

my decease devolve, and be held and enjoyed with the sd —— estate, but not so as to increase or multiply charges or powers of charging (*b*). *General devise of all other freehold estates, as in Precedent* XXII., UNTO B., of &c., and C., of, &c., and their heirs, TO THE SEVERAL USES, upon the several trusts, and with and subject to the several powers and provisions hereinafter limited, declared, and contained concerning the same respectively (that is to say),

As to freeholds in Kent to trustees for 500 years.

AS TO, and concerning my lands, messuages, and hereditaments, situate in the parishes of —— or elsewhere in the county of Kent, *to B. and C., for a term of* 500 *years, on trusts after declared*, p. 1329, *form* IV., AND AS TO, and concerning my sd lands, messuages, and hereditaments, situate in the county of Kent, from and after the determination of the sd term of 500 years, and in the meantime subject thereto, and to the trusts thereof, AND AS TO, and concerning all the residue of my sd freehold estates and hereditaments hereinbefore devised to the sd B. and C. from and after my decease, TO THE USE, &c. *Limitation of rent-charge to testator's wife during widowhood*, "in augmentation of the jointure provided for her by the settlement made on our marriage," p. 1331, *form* IX., *with powers of distress and entry*, p. 1149: AND TO THE FURTHER USE, that it shall be lawful for my sd wife, or her assigns, to appoint all or any part of the sd hereditaments and premises (subject as aforesd) to any person or persons for any term of years, commencing from my decease, or from any later period, with or without impeachment of waste, upon usual trusts for securing the sd rent-charge of £——, and the costs and expenses to be incurred in the execution of the trusts of such term: AND AS TO, and concerning my estates and hereditaments situate in the county of Sussex, subject to and charged with the sd rent-charge, and the powers and remedies hereinbefore given and limited for securing the same, TO THE USE, &c., *testator's son D. for life*, p. 1330,

Limitation of jointure to testator's widow,

with power to appoint a term to trustees for securing it.

Limitations of Sussex estates.

(*b*) Compare form XXI., p. 1268.

PREC. XXIV.

form v., *remainder to his wife E.*, "if surviving," *for life, form* v., *remainder to his first and other sons, in tail general,* p. 1332, *form* x., *remainder to his daughters, as tenants in common in tail general,* p. 1333, *form* XIII., *remainder to testator's daughter F. for life,* p. 1330, *form* v., *or, if for her separate use, form* VII.; *remainder to her husband G.*, "if surviving," *for life, form* v.; *remainder to F.'s first and other sons in tail general,* p. 1332; *remainder to F.'s daughters, as tenants in common in tail general,* p. 1333; *ulterior remainders to collaterals:* AND AS TO and concerning my sd estates and hereditaments in the county of Kent, and all the remainder of the sd estates and hereditaments hereinbefore devised to the sd B. and C., other than my sd estates and hereditaments in the county of Sussex, subject as to all such estates to the sd rent-charge, and the powers and remedies for securing the same, and subject as to my Kent estates to the sd term of —— years, and the trusts thereof, TO THE USE, &c., *to daughter F. and her husband successively for life, and her issue in tail, as above, remainder to son D. and his wife successively for life, and his issue in tail, as above,* WITH REMAINDER to such and the same uses, and upon such and the same trusts as are hereinbefore limited, declared, and expressed of and concerning my sd estates and hereditaments in the county of Sussex, to take effect after the several deceases of my sd son and daughter, and their respective wife and husband, and the failure of issue of their respective bodies. *Trusts of term to raise money to pay debts,* "including any mortgage debts charged on any of the sd estates hereinbefore devised in strict settlement in exoneration of such estates therefrom," *and legacies, in aid of personal estate,* p. 1340, *adding before the final clause,* "AND UPON FURTHER TRUST, that the sd trustees or trustee shall, as soon as conveniently may be after the decease of my sd wife, by all or any of the means aforesd raise such sum or sums of money not exceeding in the whole the sum of £——, with interest for the same, at the rate of £—— per cent. per annum

Limitations of Kent estates.

Trusts of term.

PREC. XXIV.

from her decease, as my sd wife shall by her will, or any codicil thereto, direct or appoint, and shall pay and apply such sum or sums and interest to such person or persons, and for such purposes as she my sd wife shall by her will, or any codicil thereto, appoint or bequeath the same": PROVIDED ALWAYS, and I hereby declare, that as between the persons who may become entitled to my estates in the county of Kent and the persons entitled to the other estates charged with the sd rent-charge of £—— hereinbefore limited to my sd wife (and so that this declaration shall not affect the rights or remedies of my sd wife or her assigns for the recovery of the sd rent-charge), my Kent estates shall be liable for the payment of one equal third part only of the sd rent-charge, and the costs and expenses of raising the same, and that the residue of my estates hereinbefore charged therewith shall be liable for the payment of the residue of the sd rent-charge, costs, and expenses: PROVIDED ALWAYS, and I declare that if the sd D. shall survive the sd E. it shall be lawful for him, the sd D., &c., *Power to appoint a jointure to an after-taken wife*, p. 1163, *form* XXIV., *saying*, "to be charged upon all or any of the hereditaments of which the sd D. shall be or become tenant for life under this my will, but subject to the uses and estates preceding the life estate of the sd E.," *Similar power to F. to appoint a rent-charge to an after-taken husband; Power to tenants for life other than D. and F. to charge jointures and rent-charges for husbands*, pp. 1341, 1342, *mutatis mutandis, saying*, "tenant for life of the sd premises hereinbefore devised to the sd B. and C. or any part thereof" "to be charged upon the premises of which the person exercising this present power shall be or become tenant for life;" *Power to tenants for life, including D. and F., to charge portions*, p. 1342, *with similar variations; add provisoes at* p. 1168, *forms* XXIX. *and* XXX., *confining the latter to the Sussex estates and adding a similar proviso as to the remainder of the estates; Minority clause*, p. 1342, *saying*, "possession of the whole or any part of the sd hereditaments

Declaration as to incidence of rent-charge as between the several estates.

PREC. XXIV.

and premises," "rents and profits of the whole or such part as aforesd of the sd premises as the case may be," "as if the same had arisen from a sale of the whole or such part as aforesd of the sd premises as the case may be under the power, &c.," *or full form*, p. 1170, *mutatis mutandis; Powers of leasing as in Precedent* XXII., *given to*, "every person hereby made tenant for life of the whole or any part of the hereditaments and premises hereby devised in strict settlement when he or she shall be entitled to the rents and profits thereof, and also to the trustees, &c.," *saying afterwards*, "of the whole or such part as aforesd of the sd premises as the case may be," *Powers of sale and exchange* [*partition, enfranchisement, &c.*] *as in Precedent* XXII., *but confined to the Sussex estates*, AND I DECLARE that the several powers of sale and exchange [partition, enfranchisement, &c.] hereinbefore contained with respect to my estates and hereditaments in the county of Sussex, and the powers, trusts, and provisions ancillary thereto, and the trusts of the moneys produced by the exercise of such several powers, shall be applicable to my sd estates and hereditaments in the county of Kent, and all the remainder of the estates and hereditaments hereinbefore devised to the sd B. and C., exactly in the same manner as if such several powers, trusts, and provisions were here repeated with the substitution of the sd estates and hereditaments in the county of Kent, and all the remainder of the sd estates and hereditaments hereinbefore devised to the sd B. and C. for the sd estates and hereditaments in the county of Sussex; *Specific and general legacies; Residuary bequest of personalty including chattels real subject to payment of debts, &c., including mortgage debts, to son D. absolutely*, p. 1268; *Trustee clauses and other usual clauses as in Precedent* XXII.

Powers of sale, &c., as to Kent estates by reference to powers as to Sussex estates.

IN WITNESS, &c.

XXV.

PREC. XXV.

SHORT WILL EMBODYING *the* INSTRUCTIONS *for the Will,* WHERE *the Testator is* IN EXTREMIS, *and there is no time for the preparation of a formal Will.* (*b*)

I, ——, of ——, declare this to be my last and only will: I GIVE all my real and personal estate to, *trustees*, their heirs, exors, and admors, upon trust to carry out the following instructions: AND I give to them or other the trustees or trustee of this my will the fullest and most absolute authority and discretion as to the mode of doing so, including power to execute and do all such settlements, assurances, declarations of trust, and other instruments and acts as they or he may think expedient for that purpose, and also power to modify or depart from the sd instructions to any extent that may be deemed necessary or desirable in order to carry out my general intentions and wishes as therein expressed or to make the dispositions conformable to law, and I appoint the sd —— exors. *Copy of instructions.*

As WITNESS my hand this —— day of ——.

XXVI.

PREC. XXVI.

CODICIL SUBSTITUTING *an* EXECUTOR *and* TRUSTEE *for one Appointed by the Will and* ALTERING LEGACIES.

Commencement, p. 1229, *form* IV.: I HEREBY revoke the appointment of K. as one of the exors and trustees of my will, [(*c*) and all the devises and bequests in trust, including the devise of estates vested in me as a trustee or mortgagee,

(*b*) It is hardly necessary to say that this device should not be had recourse to except in case of urgent necessity.

(*c*) The part in these two brackets may be omitted where brevity is desired.

thereby made by me to the sd K. jointly with L.]: AND I HEREBY appoint M., of, &c., to be an exor and trustee of my sd will in the place of the sd K.: [(*c*) AND I DEVISE and bequeath unto and to the use of the sd L. and M., their heirs, exors, admors, and assigns, all the real and personal estate, including estates vested in me as a trustee or mortgagee, by my sd will devised and bequeathed to the sd K. and L., upon the trusts and with and subject to the powers and provisions or for the purposes and in the manner by and in my sd will, [and the former codicils thereto,] declared and expressed concerning the same respectively]: AND I DECLARE that my sd will [and former codicils] and all the devises and bequests therein contained, shall be construed and take effect in all respects as if the name of the sd M. had been originally inserted therein throughout in lieu of the name of the sd K. as a trustee thereof and devisee of estates vested in me as a trustee or mortgagee: [but I hereby confirm all the gifts made by my sd will [and prior codicils] to the sd K. beneficially, [except the legacy of £—— thereby given to him as exor and trustee,] and I bequeath the sum of £—— to the sd M. for his trouble]: I HEREBY bequeath a legacy of £—— to N. in addition to the legacy of £—— given to him by my sd will, and I revoke the legacy of £—— thereby given to P., AND IN ALL other respects I confirm my sd will [as altered by the sd former codicils thereto.]

PREC. XXVI.

IN WITNESS, &c.

XXVII.

CODICIL *appointing an* ADDITIONAL TRUSTEE *and* EXECUTOR *to those appointed by the Will.*

PREC. XXVII.

Commencement, p. 1229, *form* IV.; I HEREBY APPOINT M., of, &c., to be an exor and trustee of my will, to act jointly

PREC. XXVII.

with K. and L., who are thereby appointed exors and trustees, [(*d*) and I devise and bequeath unto and to the use of the sd K., L., and M., their heirs, exors, admors, and assigns, all the real and personal estate, including estates vested in me as a trustee or mortgagee, by my sd will devised and bequeathed to the sd K. and L., upon the trusts and with and subject to the powers and provisions or for the purposes and in the manner by and in my sd will, [and the former codicils thereto,] declared and expressed concerning the same respectively, and] I DECLARE that my sd will and former codicils shall be construed and take effect in all respects as if the names of the sd K., L., and M. had been originally inserted therein throughout in lieu of the names of the sd K. and L. as exors and trustees thereof and devisees of estates vested in me as a trustee or mortgagee, [(*e*) and I declare that all estates, trusts, and powers by my sd will [and the former codicils thereto] given to, &c., *continue declaration as to devolution of trustees' powers*, p. 1354]: AND I hereby bequeath a legacy of £—— to the sd M. for his trouble, AND IN ALL other respects I confirm my sd will [as altered by the former codicils thereto].

IN WITNESS, &c.

XXVIII.

PREC. XXVIII.

CODICIL SUBSTITUTING *the* CHILDREN *of a* SON *who has* DIED *for their Parent* (*f*).

Commencement, p. 1229, *form* IV.: WHAS my son K. died on the —— day of ——, leaving —— children: Now I

(*d*) See note to last precedent.

(*e*) The clause in this bracket will not be necessary if there were originally three or more trustees, so that the trusts and powers devolved on "the survivors or survivor," &c.

(*f*) This codicil is adapted to the case where the gift to the son would fail by his death in the testator's lifetime, owing to his being comprised in a class, see p. 1287, note (*c*).

HEREBY declare that such of the children of my sd son K. as shall survive me and being male attain the age of twenty-one years, or being female attain that age or marry, shall take by substitution as tenants in common in equal shares, if more than one, the share in my residuary estate which the sd K. would have taken had he survived me, and in all other respects I confirm my sd will [as altered by the former codicils thereto]. PREC. XXVIII.

IN WITNESS, &c.

XXIX.

CODICIL *directing that* SUM ADVANCED *to Daughter on her marriage and* ADVANCES *made to a Son shall be* BROUGHT *into* ACCOUNT, *and Settling the* DAUGHTER'S SHARE *of Residue.* PREC. XXIX.

Commencement, p. 1229, *form* IV.: WHAS, on the marriage of my daughter K., I transferred stocks and securities of the aggregate value of £—— as her marriage portion to the trustees of her settlement: NOW I HEREBY declare that such stocks and securities shall be taken at the aforesd value of £—— in or towards satisfaction of the share in my residuary trust estate bequeathed by my sd will to the sd K., and shall be brought into hotchpot and accounted for accordingly: AND I FURTHER declare that the share of the sd K. in my residuary trust estate shall not be paid or transferred to her, but shall be retained by my trustees and held upon the trusts and with and subject to the powers and provisions hereinafter declared and contained concerning the same (that is to say), &c., *see Settlement of children's shares*, p. 1295: AND WHAS, since the date of my sd will I have made advances to my son L. or for his benefit amounting altogether to £——, now I direct that such sum of £—— shall be brought into account in the way of hotchpot

PREC. XXIX.

by my sd son in the division of my residuary estate, AND IN ALL other respects I confirm my sd will [as altered by the former codicils thereto].

IN WITNESS, &c.

XXX.

PREC. XXX.

CODICIL *devising* FREEHOLDS CONTRACTED *to be* PURCHASED, *and directing that* PURCHASE MONEY *shall be* PAID *out of* GENERAL *Estate.*

Commencement, p. 1229, *form* IV.: WHAS I have lately contracted to purchase from —— a freehold messuage, lands, and hereditaments, situate, &c., at the price of £——, of which I have paid the sum of £—— by way of deposit: NOW I HEREBY DEVISE the sd messuages, lands, and premises to ——, his heirs and assigns, for his and their absolute benefit [in addition to the disposition in his favour contained in my sd will]: AND IN the event of the purchase of the same not having been completed in my lifetime, I direct that my exors shall pay to the sd ——, his heirs or assigns, out of my general personal estate, the sum of £——, being the balance remaining due of the sd purchase-money with the interest, if any, and all costs and expenses payable under the sd contract of purchase in order to enable him or them to complete the sd purchase: AND IN ALL other respects I confirm my sd will [as altered by the previous codicils thereto].

IN WITNESS, &c.

XXXI.

PREC. XXXI.

CODICIL *by a* WIDOW CONFIRMING *a Will made in her* HUSBAND'S LIFETIME UNDER *a* POWER, *which* CEASED *to be operative owing to his death.*

Commencement, p. 1229, *form* IV.: WHAS since the date of my sd will [and the codicils thereto] my husband, ——, has died, whereby the power of appointment purporting to be exercised by my sd will [and codicils] has become inoperative, and the property which was the subject of such power has become beneficially vested in me absolutely. NOW I HEREBY CONFIRM my sd will [and the prior codicils thereto]: AND I DIRECT that every disposition therein contained which operated by way of appointment under the sd power therein referred to shall take effect out of my beneficial estate and interest in the sd property purporting to be thereby appointed: AND I DEVISE and bequeath such property, and all my estate and interest therein accordingly, so as to give effect to the dispositions contained in my sd will [and codicils].

IN WITNESS, &c.

XXXII.

PREC. XXXII.

CODICIL *Correcting* CLERICAL ERRORS *in a* WILL.

Commencement, p. 1229, *form* IV. I DECLARE that my sd will shall be read and construed and take effect in all respects, 1st., as if the word "——" had been inserted after the word "——" in the —— line of the —— page thereof; and 2ndly, as if the words "——" had been substituted for the words "——" in the —— line of the —— page thereof: AND IN ALL other respects I confirm my sd will [as altered by the former codicils thereto].

IN WITNESS, &c.

XXXIII.

PREC. XXXIII.

CODICIL *by a* MAN *on his* SECOND MARRIAGE, *giving his* WIFE *an* ANNUITY, *and* CONFIRMING *a* WILL *made* BEFORE *and* REVOKED *by such* MARRIAGE.

Commencement, p. 1229, *form* IV. *Bequest of annuity to wife*, p. 1256. AND IN all other respects I confirm my sd will, and direct that it shall operate as if I had re-executed it on this —— day of ——.

IN WITNESS, &c.

XXXIV.

PREC. XXXIV.

REVOCATION *of a* WILL(*g*).

I, A., of, &c., hereby revoke a will made by me bearing date, &c., and all other testamentary instruments whatsoever heretofore made by me, and declare it to be my intention to die intestate (*a*).

IN WITNESS whereof I have hereunto set my hand this —— day of ——.

Signed by the above-named ——, in the presence of, &c., *rest of attestation clause*, p. 1357.

(*g*) Although a will may be revoked by cancellation, burning, &c., *animo revocandi* (1 Vic. c. 26, s. 20), it may sometimes be desirable to put the intention on record.

(*a*) It is more economical to die testate than intestate, as the administration duty is half as much again as the probate duty.

XXXV.

WILL Reviving *a* Will *and* Codicils *previously* Revoked. PREC. XXXV.

I, A., of, &c., declare this to be my last will. I HEREBY revive and confirm a will dated, &c. [and two codicils thereto dated respectively, &c.] formerly made by me, and which sd will and codicils I revoked on the —— day of ——.

IN WITNESS, &c.

MISCELLANEOUS PRECEDENTS.

I.

CONVEYANCE *of* Glebe *land by a* Rector, *with* Consent *of the* Patron *and the* Ecclesiastical Commissioners(*b*). Grant *and* Reservation *of a* Right *of* Way *and of the* Right *of* Taking Stone *from a* Quarry. PREC. I.

Parties, A., "rector of the rectory and parish church of ——, in the county of ——," 1; B., "patron of the sd rectory," 2; the Ecclesiastical Commissioners for England, 3; C., *purchaser*, 4. WHAS the sd A., with the consent of the sd B., as patron of the sd rectory, and with the approval of the sd Commissioners, has agreed with the sd C. for the sale to him of the fee simple in possession of the lands hereinafter mentioned and expressed to be hereby Agreement for sale.

(*b*) The authority to sell is given by 21 & 22 Vict. c. 57, s. 1. As to the consents necessary, see 5 & 6 Vic. c. 108, s. 20, *et seq.* The execution of the conveyance by the necessary consenting parties is conclusive that the requisites of the Acts have been complied with; see 5 & 6 Vic. c. 108, s. 7. See also Phillimore on Ecclesiastical Law, pp. 1694, 1697. These Acts have the misleading short title of "The Ecclesiastical Leasing Acts."

PREC. I.

granted, which form part of the glebe of the sd rectory, together with the right of way hereinafter mentioned and expressed to be hereby granted over other parts of the glebe lands of the sd rectory, free from all charges and incumbrances, but subject to such reservations or exceptions as are hereinafter contained, at the price of £——: AND WHAS notice of the sd proposed sale was given to the Right Revd. —— Lord Bishop of ——, on the —— day of —— last, pursuant to the requirements of the Ecclesiastical Leasing Act, 1858. NOW THIS INDRE WITNESSETH that in pursuance of the sd agreement, and in consideration of the sum of £—— on or before the execution of these presents paid by the sd C. to the account of the Ecclesiastical Commissioners at the Bank of England, as directed by the sd Ecclesiastical Commissioners in that behalf (the payment of which sd sum is intended to be acknowledged by a memorandum indorsed on these presents, and the payment whereof the sd Commissioners do hereby acknowledge), the sd A., with the consent (hereby testified) of the sd B., as patron of the sd rectory of ——, and also with the approval (hereby testified) of the sd Ecclesiastical Commissioners, doth hereby in pursuance of the power or authority in that behalf given to him by the Ecclesiastical Leasing Acts, and of every other power or authority enabling him in this behalf, grant unto the sd C., his heirs and assigns, *Parcels*, p. 251. TOGETHER WITH the timber and other trees and underwoods, mines, minerals, and quarries, upon, in, or under the same pieces of land and premises: AND TOGETHER also with full and free right and liberty for the sd C., his heirs and assigns, at all seasonable times hereafter, to pass and repass, with or without horses and carts, for the purpose of carrying timber and other wood and stone from the sd lands and premises hereby assured over the other lands belonging to the sd rectory, but for no other purpose, doing thereby no unnecessary damage, and making compensation for all damage thereby done or occasioned to such other land, or the timber or other trees, underwood, or crops thereon;

Notice given to Bishop.

Witnesseth.

Grant.

Parcels.

Special right of way.

General Words, Estate Clause; EXCEPT AND ALWAYS RESERVED unto the sd A., his successors and assigns, the full and free right and liberty at all times hereafter, to work the quarry situate in the sd lands hereby assured, at the point marked —— in the sd plan, and to take and carry away the stone therefrom over the sd lands hereby assured for the purpose of repairing or rebuilding the [chancel of the parish church of —— aforesd, or the] parsonage house and other buildings, or for the improvement in any manner of the glebe lands belonging to the sd rectory, but for no other purpose, doing thereby no unnecessary damage to the sd pieces of land hereby assured, or the timber or other trees, underwood or crops thereon, and making compensation, &c., and so nevertheless, that the sd C., his heirs or assigns, shall not by the reservation hereinbefore contained be in any way precluded from working the sd quarry and taking the stone therefrom to such extent as he or they may think fit: AND ALSO EXCEPT and always reserved unto the sd A., his successors and assigns, full and free right and liberty at all times hereafter to pass and repass with cattle from the lands belonging to the sd rectory over the lands hereby assured along the roadway marked —— in the sd plan to the river —— aforesd, for the purpose of watering cattle at the point marked ——: TO HAVE AND TO HOLD all the sd premises hereinbefore expressed to be hereby granted UNTO the sd C., his heirs and assigns, SUBJECT to the reservations and exceptions hereinbefore contained, and also subject to the tithe commutation rent-charge (if any), and to all other (if any) duties, payments, and obligations, ecclesiastical and civil, charged upon or payable out of the sd premises hereby assured, and to all rights of way and easements (if any) affecting the same: TO THE USE of the sd C., his heirs and assigns for ever. *Covenant by A. with C. against incumbrances*, p. 284. (*c*)

Reservation of right to work quarry.

And right to water cattle.

Habendum.

IN WITNESS, &c.

(*c*) Incumbents selling under the above Acts do not usually give covenants for title.

II.

PREC. II.

CONVEYANCE *by the* ECCLESIASTICAL COMMISSIONERS *of the* REVERSION *of* LANDS *and* TITHE RENT-CHARGE *on other lands* EXPECTANT *on a* LEASE *for* LIVES(*d*).

Parties, The Ecclesiastical Commissioners for England, 1; A. and B., *the holders of the lease for lives*, 2; C., *purchaser*, 3. WHAS the pieces of land, tithes, and hereditaments hereinafter mentioned were formerly part of the possessions of the Archbishop [Bishop] of —— in right of his See. *Recite lease for lives of lands and tithes on other lands prior to the commutation of tithes.* AND WHAS by an award made in pursuance of the Act for the commutation of tithes in England and Wales, and duly confirmed on the —— day of —— by the Tithe Commissioners for England and Wales, for commuting the tithes of the parish of —— aforesd, the annual sum of £—— by way of rent-charge was awarded to be paid to the sd, *lessees*, their heirs and assigns, during the continuance of the sd lease, and after the expiration or other determination thereof, then to the sd Archbishop [Bishop] and his successors, instead of the tithes aforesd: AND WHAS by the instrument of apportionment of the rent-charge awarded to be paid in lieu of the sd tithes of the sd parish of ——, and duly confirmed by the sd Tithe Commissioners on the —— day of ——, the rent-charge of £—— was charged upon the lands particularly described in the sd apportionment, a summary whereof taken from the sd apportionment is contained in the schedule hereto: AND WHAS by virtue of the several Acts of Parliament relating to the sd Ecclesiastical Commissioners

Recitals.

Title to reversion.

Lease for lives.

Commutation of tithes.

Apportionment of tithes.

Reversion vested in Ecclesiastical Commissioners.

(*d*) See the Acts referred to, 2 Davidson's Prec., 4th ed. p. 460, note; and Phillimore on Ecclesiastical Law, pp. 1692 and 2094 *et seq.*

for England, and of an Order of Her Majesty in Council, dated, &c., and duly published in the London Gazette on the —— day of ——, ratifying a scheme of the sd Ecclesiastical Commissioners therein recited or referred to, the reversion of the sd pieces of land, tithe rent-charge, and premises, comprised in the sd lease of, &c., and the rent reserved by the same lease became vested in the sd Ecclesiastical Commissioners for the purposes of their sd Acts: AND WHAS the sd Commissioners, in pursuance of the sd Acts of Parliament, prepared and laid before Her Majesty in Council a scheme dated, &c., and thereby recommended and proposed, &c., *Recite scheme authorising the Commissioners to dispose of the estates of the See with the consent of the respective holders.* AND WHAS the sd last mentioned scheme was by an Order of Her Majesty in Council dated, &c., and published in the London Gazette of, &c., duly ratified and made effectual in law: AND WHAS the sd Ecclesiastical Commissioners, in pursuance of their sd Acts, and the sd recited scheme and Order in Council, dated respectively, &c., have, with the consent (hereby testified) of the sd A. and B., agreed with the sd C. for the sale to him of the reversion, estate, and interest, of the sd Commissioners in the sd lands, tithe rent-charge, and premises comprised in or subject to the sd lease, subject as hereinafter mentioned, for the sum of £——, being the consideration which upon due calculation and enquiry has appeared to the sd Commissioners to be just and reasonable. NOW THIS INDRE WITNESSETH that in pursuance of the sd agreement, and in consideration of the sum of £——, on or before the execution of these presents paid by the sd C. to the account of the Ecclesiastical Commissioners at the Bank of England, as directed by the sd Commissioners in that behalf (the receipt of which sd sum is intended to be acknowledged by a memorandum endorsed on these presents, and the payment whereof the sd Commissioners do also hereby acknowledge), They, the sd Ecclesiastical Commissioners for England, in pursuance of

PREC. II.

Scheme.

Confirmation of scheme.

Contract for sale.

Witnesseth.

Grant.

PREC. II.

the sd Order in Council of the —— day of ——, and of every or any other power or authority enabling them in this behalf, and as and according to their reversion, estate, and interest, and with the consent (hereby testified) of the sd A. and B. as the persons in whom the sd lease is now legally vested, do hereby grant unto the sd C., his heirs and assigns, ALL THAT the reversion in fee simple expectant upon the determination of the hereinbefore recited lease and all other the estate and interest (if any) of the sd Ecclesiastical Commissioners of and in, 1st, ALL THOSE pieces or parcels of land, &c., *General Words;* and, 2ndly, ALL THAT or those the sd Tithe Commutation rent-charge or rent-charges, amounting to £—— per annum, arising or payable in respect of the lands in the parish of ——, in the county of ——, which are particularly mentioned or described in the schedule hereto, but variable according to the provisions of the sd Acts for the commutation of tithes, together with all powers, rights, and remedies, for the recovery of such rent-charge or rent-charges; *Habendum unto and to the use of C. in fee,* "SUBJECT TO all rights of way and other easements, and subject to and charged with all tithes or rent-charges payable in lieu thereof, and all rates, taxes, charges, and outgoings whatsoever by law affecting the same respectively." *Covenant by Ecclesiastical Commissioners against incumbrances,* p. 284, *mutatis mutandis.*

Parcels.

Habendum.

IN WITNESS, &c.

Schedule.

III.

PREC. III.

CONVEYANCE *by* TRUSTEES *for* SALE *of* REAL ESTATE *to* BENEFICIARY *absolutely Entitled to Proceeds of Sale who* ELECTS *to Take the property* UNCONVERTED.

PREC. III.

Parties, A. *and* B. *trustees*, 1; C. *beneficiary*, 2. *Recitals of conveyance on marriage of* K. *with* L. *to trustees for sale*,(*e*) *and settlement of even date declaring trusts of proceeds, and shewing that in the events* C. *has become absolutely entitled:* AND WHAS no sale has been made of any part of the hereditaments comprised in the first hereinbefore recited indre, and the sd C., having elected to take the same hereditaments as real estate, has requested the sd A. and B. to convey the same to him. NOW THIS INDRE WITNESSETH, that in pursuance of such request, the sd A. and B. do, and each of them doth, hereby grant and release unto the sd C., his heirs and assigns, ALL AND SINGULAR the —— and hereditaments comprised in, and expressed to be granted by, the hereinbefore recited indre of the —— day of ——. *Short general words*, p. 264; *Estate clause*, p. 265; *Habendum to C. in fee*, p. 266, FREED and discharged from the trusts and powers declared and contained concerning the same in the sd indre of, &c., *the conveyance in trust for sale; Covenant by A. and B. against incumbrances*, p. 285.

Witnesseth.

IN WITNESS, &c.

IV.

PREC. IV.

CONVEYANCE *and* ASSIGNMENT *by a person* GOING ABROAD *of* FREEHOLD, LEASEHOLD, *and* PERSONAL *Property to a* TRUSTEE *in trust for* SALE, *with powers of* LEASING, MORTGAGING, *and* MANAGEMENT *until sale, and special* POWERS *of* DEALING *with* MORTGAGES.(*f*)

(*e*) The deed might usually be endorsed on the conveyance in trust for sale. See the precedents of such a conveyance, and settlement of the proceeds of sale, effected by one deed, p. 1108, and by two deeds, pp. 1111, 1114.

(*f*) For a form of power of attorney for the like purposes, see p. 158. A

PREC. IV.

Recital. Parties, A., *owner*, 1; B., *trustee*, 2. *Short recitals of A.'s title to property:* AND WHAS the sd A., being about to go and reside abroad, is desirous of vesting the sd hereditaments and property in the sd B. upon and for the trusts and purposes and with the powers hereinafter expressed:

Witnesseth. And the sd B. has agreed to accept such trusts: NOW THIS INDRE WITNESSETH, that in pursuance of the sd desire, and in consideration of the premises, the

Grant and assignment. sd A. doth hereby grant and assign unto the sd B., his heirs, exors, admors, and assigns respectively, *Freehold and leasehold parcels by a specific or general description, referring, if convenient, to a schedule:* And all buildings, fixtures, machinery, tools, implements, furniture, crops, or other produce, live and dead stock, and effects of every description upon, about, or belonging to the sd respective hereditaments and premises hereby assured respectively, or any part thereof. *General words and estate clause*, p. 264: TO HAVE AND TO HOLD all the sd hereditaments, personal property, and premises hereby assured,

Habendum. UNTO AND TO THE USE of the sd B., his heirs, exors, admors, and assigns respectively, as to the sd freehold and personal property (other than leaseholds) absolutely, and as to the sd leasehold premises for all the residue now to come of the respective terms for which the same are respectively holden, and subject to the rents and covenants on the part of the lessees, and conditions reserved

Subject to mortgages. by and contained in the respective leases thereof [BUT SUBJECT, as to such parts of the sd hereditaments and premises as are affected thereby, to the several charges and incumbrances the short particulars of which are

On trust for sale. contained in the —— schedule hereto], UPON TRUST that the sd B., his heirs, exors, or admors, shall immediately, or at any time or times hereafter in his or their uncontrolled discretion sell, exchange, or dispose of the sd

conveyance in trust is preferable to giving a power, as the latter would be revoked by the appointor's death, and it is not desirable that an instrument of this description should become part of the title on a sale.

respective premises hereby assured, or any of them, or any part or parts thereof, in such manner as he or they may think fit, and as to any sale either by public auction or private contract, and either together or in parcels, and subject to any conditions which he or they shall think proper, with full power to him or them to buy in or rescind or vary any contract for sale, and to resell, without being responsible for loss: [AND MAY make every or any such sale as aforesd, either subject to all, or any, or any part of the charges and incumbrances affecting the premises sold, or any part or parts thereof respectively, or discharged from the same, or any part or parts thereof respectively, or upon the terms of the purchaser or purchasers being indemnified against the same by means of a charge thereof on other property, or in case of a rent-charge or other annual sum by means of a fund to be set apart or appropriated to provide for the payment thereof, or by any other available means, and in such manner in all respects as the sd trustee or trustees may think fit]: AND IT IS HEREBY FURTHER DECLARED that it shall be lawful for the sd B., his heirs, exors, or admors, at any time or times hereafter, to demise, &c., *continue power to grant leases of unsold land*, p. 1073, *form* XLVII.; *add, if necessary, powers of leasing for building or mining purposes, and other incidental powers*, pp. 1175, *et seqq.*, *mutatis mutandis*: [AND ALSO to mortgage or charge all or any part or parts of the sd hereditaments and premises which may for the time being remain unsold for the purpose of raising any sum or sums of money which the said trustee or trustees may think fit for discharging or reducing all or any of the charges and incumbrances specified in the sd —— schedule hereto, or any charges or incumbrances which may have been created under the present power, and which shall for the time being be subsisting, or any part or parts thereof respectively, or for the purpose of consolidating any such charges or incumbrances, or by way of security for any such mortgage debt or debts, either in addition to or in substitution wholly or in part

Provision as to incumbrances.

Power to lease, &c.

Power to mortgage.

PREC. IV.

for any then subsisting security or securities for the same, or for otherwise effectuating any of the purposes of these presents; And to make any such mortgage as aforesd, either with or without a power of sale, and with such other powers and provisions as he or they shall think proper: AND ALSO to concur in or consent to the transfer of any such mortgage debt or debts as aforesd, and all or any of the securities for the same, to any other person or persons, whether as part of an arrangement for the consolidation of any such charges or incumbrances as aforesd or otherwise: AND ALSO (whether upon any such transfer or consolidation as aforesd, or otherwise) to consent to or allow any alteration in the rate of interest upon the mortgage debt or debts, or the terms of repayment or redemption, and to allow any arrears of interest upon the mortgage debt or debts to be capitalized, and carry interest, and to authorise the release of any of the securities for any such mortgage debt or debts as aforesd: AND TO insert in any deed or instrument for effecting any such transfer or consolidation or other arrangement as aforesd, such powers or provisions by way of further security to the transferee or transferees, or mortgagee or mortgagees, or otherwise as may be deemed proper, and generally to enter into or concur in such arrangements in relation to the incumbrances for the time being affecting the sd respective hereditaments and premises, or otherwise to deal with such incumbrances, in such manner and with the like powers, authorities, and discretions in all respects as the sd trustee or trustees might have done if he or they were absolutely entitled to the sd premises: AND IT IS HEREBY AGREED AND DECLARED that no mortgagee or mortgagees advancing money upon any mortgage purporting to be made under the power of mortgaging hereinbefore contained shall be bound to see or inquire as to the purpose for which the same is wanted, or otherwise as to the regularity or propriety of such mortgage or its conformity to the power in that behalf hereinbefore contained, but every mortgage purporting to be

To concur in transfers of mortgages.

General powers of dealing with mortgages.

Mortgagees' indemnity clause.

made pursuant to such power shall be valid and effectual as regards the safety and protection of the mortgagee or mortgagees notwithstanding any want of conformity to such power or other irregularity: PROVIDED ALSO, and it is hereby agreed and declared, that nothing herein contained shall be construed to give to any of the mortgagees or incumbrancers mentioned in the sd —— schedule hereto, or any other person or persons having any mortgage or charge upon any of the sd premises any further or additional security than is now possessed by him or them under or by virtue of his or their existing security or securities], [*If any of the property is held in undivided shares, Power to partition*, p. 1075, *mutatis mutandis*]: AND IT IS HEREBY FURTHER DECLARED that the sd trustee or trustees may make, enter into, execute, and do all such contracts, conveyances, demises, [mortgages], assurances, and acts as shall be deemed necessary or expedient for the purpose of effectuating any such sale, exchange or lease, [mortgage or partition], as aforesd, and generally shall have the same powers of dealing with the sd premises as if he or they were absolutely entitled thereto: AND IT IS HEREBY FURTHER AGREED AND DECLARED that the sd trustee or trustees shall stand seized and possessed of the sd respective hereditaments and premises in the meantime and until the same shall be sold or disposed of under the trusts and powers hereinbefore declared and contained, UPON TRUST to manage or superintend the management, &c., *continue power to manage real estate till sale*, p. 1070, *to the end of the first paragraph*, WITH POWER for that purpose to appoint and employ any agents, overseers, receivers, or other persons at such remuneration by way of salary, commission, or otherwise as he or they may think proper, and the same from time to time to dismiss and discharge, and any others to appoint or employ in their stead, and with power also to sell the produce of the sd estates and premises respectively or any part or parts thereof respectively in such manner in all respects as he or they shall think proper: AND IT IS HEREBY FURTHER AGREED AND DECLARED that the sd trustee

PREC. IV.

This deed not to give additional security to mortgagees.

Power to execute assurances.

Interim trusts.

To manage.

Power to employ agents.

Trusts of rents, sale

PREC. IV.

and mortgage moneys.

or trustees shall stand possessed of the rents and profits of the sd premises, and of all moneys arising from any sale or exchange, [mortgage or partition], thereof, or of any part or parts thereof, or from the sale of the produce thereof, under the trusts or powers hereinbefore contained, UPON TRUST in the first place to pay, allow, or retain out of the sd rents and profits all rents, rates, taxes, and outgoings, which shall be payable in respect of the sd premises, and the expenses of repairs and insurance against fire, and the remuneration of agents, overseers, receivers, and other persons employed in and about the same, and all expenses of or incident to the management of the sd premises, or the receipt or recovery of the rents and profits thereof, and the interest on any principal sums and any annual sums for the time being charged on the sd premises or any part thereof, AND UPON TRUST out of the moneys arising from any such sale or exchange, [mortgage or partition], as aforesd to pay or retain the expenses of and incident to such sale or exchange, [mortgage or partition], and also if thought fit any principal or other moneys charged on the sd premises or any part thereof by way of mortgage or otherwise; AND UPON TRUST to pay the ultimate surplus of the rents and profits of the sd premises and of the moneys arising from any such sale or exchange, [mortgage or partition], as aforesd, after making all such payments, allowances, and deductions thereout as hereinbefore mentioned to the sd A., his exors, admors, or assigns, as personal estate, it being the intention of the sd A. that the real estate hereby assured shall from and after the date of these presents be considered for the purpose of transmission as converted in equity into personal estate: PROVIDED ALWAYS, and it is hereby expressly declared, that all the trusts and powers hereinbefore declared and contained shall take effect and be executed and exerciseable at all times hereafter without any further consent or concurrence of or on the part of the sd A., his heirs, exors, admors, or assigns, and whether the sd A. shall be

Powers to be exerciseable without further consent.

or remain abroad or not, (*g*) *Covenants by A. for title as on a sale.* PREC. IV.

IN WITNESS, &c.

[*Schedules.*]

V.

REVOCABLE GRANT *and agreement respecting the supply of* WATER *to a* HOUSE *from an adjoining estate.* (*a*) PREC. V.

Parties, A., 1; B., 2; *Recite titles of A. to the X. estate, and of B. to Y. House adjoining that estate:* AND WHAS the sd B. some time since, with the consent of the sd A., laid down pipes from the sd X. estate to Y. House aforesd, for the purpose of conveying water from the sd X. estate to Y. House for domestic and garden purposes: AND WHAS the sd A. is willing to grant the right to take and convey water in manner and for the purposes aforesd to the sd B., his heirs and assigns, the owner or owners for the time being of Y. House, upon condition that such privilege shall not be used to the prejudice of the owners of the X. estate, and shall be revocable at pleasure, as hereinafter mentioned, and shall be subject to such other restrictions and stipulations as are hereinafter expressed: NOW THIS INDRE WITNESSETH that, in consideration of the premises, and for the other considerations hereinafter appearing, the sd A. doth hereby grant and demise unto the sd B., his heirs and assigns, the owner or owners from time to time of Y. House aforesd, FULL AND FREE liberty and licence at all times hereafter, until such liberty and licence shall be revoked under

Recitals.

That pipes have been laid down.

Desire of A. to grant right of taking water.

Witnesseth.

Grant.

Liberties.

(*g*) The trustee clauses are omitted in reliance on the statutory provisions, see p. 1088, note (*d*). If the power of appointing new trustees is to be vested in A., insert the first part of clause LXIX., p. 1090, *mutatis mutandis*.

(*a*) The object of this grant is to prevent a legal easement by user from being acquired. See 2 & 3 Wm. IV., c. 71, s. 2.

PREC. V.

the provision in that behalf hereinafter contained, to take and convey water by means of any pipes and tanks already laid down, or to be hereafter laid down, for such purpose from the sd X. estate for the use of Y. House aforesd, and the gardens and grounds belonging thereto, in as full and ample a manner as heretofore, together also with full liberty and licence for the person or persons aforesd, or any person or persons authorised by him or them, with workmen and others, from time to time hereafter, until such liberty and licence shall be revoked, to enter on the sd X. estate, or any part thereof, and to dig, search for, and examine the sd pipes and tanks, and do all necessary cleansings and repairs thereto, or renewals thereof, when and as often as occasion shall be or require, giving nevertheless to the sd A., his heirs or assigns, or the owner or owners for the time being of the sd X. estate, and to his or their tenants for the time being, reasonable notice, previous to such entry, of the object and purpose of the same, and making to the sd A., his heirs or assigns, and to such owner or owners and tenants, full compensation for all damage which may be done to his or their land, or the timber, trees, wood, or underwood, or growing crops thereon, by reason of the exercise of any of the liberties and licences hereinbefore contained: And YIELDING AND PAYING unto the sd A., his heirs or assigns, or the owner or owners from time to time of the sd X. estate, the yearly rent or payment of twenty shillings for or in respect of the liberties, licences, and privileges hereby granted or demised during the continuance thereof, the payment of such rent or yearly sum to be made on the —— day of —— in every year, without any deduction: PROVIDED ALWAYS that the liberties and licences hereby granted or demised shall not be used to the prejudice, injury, or inconvenience of the owner or owners of the sd X. estate or his or their tenants; And that nothing herein contained shall prevent the sd A., his heirs and assigns, or the owner or owners or tenants from time to time of the sd X. estate, or any part thereof, from diverting, diminishing, in-

Reddendum.

Provisoes.

terfering with, or cutting off the water by which the sd tanks and pipes are or may for the time being be supplied, and so that in such event the owner or owners of Y. House aforesd shall not be entitled to any compensation for the damage occasioned by the diminution or stoppage of such supply of water: PROVIDED ALSO, and it is hereby agreed and declared, that the sd A., his heirs or assigns, or the owner or owners for the time being of the sd X. estate, shall have full power and authority at any time hereafter by giving three calendar months' notice in writing to the sd B., his heirs or assigns, the owner or owners for the time being of Y. House aforesd, or leaving such notice at Y. House, to revoke and make void the liberties, licences, and powers hereby granted or demised, in which case the sd pipes and tanks shall be removed and the surface soil restored by the sd last mentioned person or persons on reasonable notice in that behalf being given to him or them, and in default thereof such pipes and tanks shall become the property of the owner or owners for the time being of the sd X. estate.

PREC. V.

Powers of revocation.

IN WITNESS, &c.

VI.

DEMISE *of* RIGHTS *for* WATER SUPPLY *of a* LOCAL GOVERNMENT DISTRICT.(*b*)

PREC. VI.

Parties, A. and B., (hereinafter generally referred to as "the lessors," which expression shall be deemed to include the owners or owner from time to time of the lands of the lessors hereinafter mentioned), 1; the Local Board of ——, in the county of ——, being the Urban Sanitary Authority of the Local Government district comprising the town

(*b*) See the Public Health Act, 1875, 38 & 39 Vic., c. 55, s. 51, and the interpretation of "Lands" and "Waterworks," in s. 4.

PREC. VI.

Witnesseth.

Grant.

Power to take water from a spring.

To lay down a main.

To construct and maintain a reservoir.

To repair, &c.

of —— aforesd, (hereinafter referred to as "the lessees," which expression shall be deemed to include their successors and assigns), 2. WITNESSETH that, in consideration of the rent and covenants hereinafter reserved and contained, and on the part of the lessees to be paid, observed, and performed, the lessors do hereby grant and demise unto the lessees FULL POWER AND AUTHORITY to and for the lessees to take, use, and enjoy all the water issuing or coming from the spring known as the ——, situate in the lands of the lessors in the parish of ——, the site of which spring is shewn on the plan hereunto annexed and thereon marked with the letter ——, And to convey the same water to any lands, tenements, or hereditaments within the sd Local Government District; AND FOR THAT PURPOSE to lay down, construct, or make within —— calendar months from the execution of these presents, and on such levels, and either upon, above, or below the surface of the lands as the lessees shall think proper, and to maintain a main or pipe or pipes or aqueducts, inlets, settle wells, and other similar works in, under, or through the lands or grounds of the lessors in the respective parishes of —— and ——, in the county of ——, in the line distinguished by the colour —— on the sd plan hereunto annexed or as near to such line as circumstances will permit, and not in any case further from the said line than —— feet on either side thereof, AND ALSO full power within the sd period of —— calendar months to make or construct, and during the term hereby granted to maintain a reservoir for the storage of the sd water, and any engines, machinery, and other works or appliances which may be deemed necessary or proper in connection therewith at the point marked —— on the sd plan: AND ALSO for the purposes aforesd, and for the purpose of examining and repairing or relaying the sd reservoir or any pipes, mains, aqueducts, engines, machinery, or other works which may be laid down or constructed by the lessees through, upon, or under the sd lands or grounds, or of laying down, constructing, or sub-

stituting any new or other pipes, mains, aqueducts, engines, machinery, or works in lieu of any previously laid down, constructed, or made, full power for the lessees, their agents or workmen, either with or without carts and horses, to enter upon the sd lands within the limits aforesd: AND TO take possession of, use, and occupy during the term hereby granted such portion or portions of the sd lands as may be necessary for the purposes aforesd, and generally full power to perform any act or thing within or upon the sd lands or grounds for the purposes aforesd or any of them which the lessees shall think proper or expedient: PROVIDED ALWAYS that not more than —— acres of land in the whole shall be taken possession of, used, or occupied by the lessees for the purposes aforesd: PROVIDED ALSO that the lessees in the exercise of the powers aforesd shall do as little damage as may be to the lands of the lessors, or the timber or other trees, underwood or crops thereon, and shall make compensation for any damage done in manner hereinafter provided: TO HAVE AND TO HOLD the powers, authorities, and premises hereby demised unto the lessees from the —— day of ——, for the term of —— years; *Reservation of rent*, p. 497: AND THE LESSEES do hereby covenant with the lessors, *to pay rent*, p. 498; *rates and taxes*, p. 499: AND FURTHER, that the lessees, in the exercise of the powers aforesd, will do as little damage as may be to the sd lands, or the timber or other trees, underwood, crops, or vegetation thereon: AND WILL make and give to the tenants of the sd lands full compensation for any loss, damage, or inconvenience which they respectively shall or may incur or sustain by reason of any works or operations of the lessees under the powers aforesd, such compensation, in case the parties do not agree, to be settled by arbitration, pursuant to the arbitration clauses contained in the Public Health Act, 1875, or any statutory modification or re-enactment thereof for the time being in force, which shall be deemed to apply in the same manner as if the same had been herein incorporated with the necessary modifications (if any): AND ALSO that

To take possession of necessary land.

Limit to amount of land to be taken.

Lessees not to damage lands.

Habendum.

Covenants by lessees.

Not to do damage.

To compensate tenants for damage.

To restore surface.

PREC. VI.

the lessees, after making any excavation or executing any of the works hereinbefore authorised, will at their own expense, as soon as conveniently may be restore the surface of the ground to the same state as it was in before such excavation or other works, so far as such surface shall not be required for the purposes aforesd: AND ALSO will, at the option and to the satisfaction of the lessors, or their agent for the time being, either carry away such portion of the soil, clay, stone, or other materials taken out in the laying down of the sd pipes, or the construction of the sd reservoir, and executing the other works aforesd, as shall not have been employed for restoring the surface of the sd lands, or for the purpose of the sd works, or leave the same or any part thereof for the use of the lessors or their tenants: AND WILL complete the laying of the sd pipes, and the construction of the sd reservoir, and execution of the other works hereinbefore mentioned in all respects within the time hereinbefore appointed in that behalf: AND THAT in case during the exercise of any of the aforesd powers the lessees shall disturb or interfere with the drainage, whether natural or artificial, and whether surface or underground, of any lands of the lessors, or shall damage any drain-pipes or culverts in or under any such lands, the lessees will at their own expense make good all such damage, and restore such drainage, under the superintendence and to the satisfaction of the lessors or their agent: AND FURTHER, that the lessees will from time to time during the term hereby granted, if and whenever thereunto required by the lessors, supply with a sufficient quantity of water all houses, cottages, farm and other buildings, and troughs and drinking places for cattle now existing, or hereafter to be erected or placed upon the sd lands, or any part thereof, within a distance of —— yards from the line of the sd pipes, the lessors bearing and paying the costs and expenses of laying down all branch pipes, and of executing all works necessary for connecting the sd houses, cottages and farm or other build-

As to soil, &c., excavated.

To complete works in a certain time.

Not to interfere with drainage.

To supply water to houses on the estate.

ings, cattle-troughs, and drinking places, with the sd main line of pipes, and also paying unto the lessees a water rate or rent in respect of such water supply as last aforesd, to be assessed on the same scale as the rate for the time being charged in respect of water supplied to houses and tenements in the town of ——: PROVIDED ALWAYS, and it is hereby agreed and declared, that if the rent hereby reserved shall be unpaid for the space of —— days after the same shall have become payable, whether lawfully demanded or not, or in case the lessees shall at any time make default in the performance or observance of any of the covenants or stipulations hereinbefore contained, and on their part to be observed and performed, and shall not make good such default, and also make full compensation to the lessors for all damage thereby sustained by them, within three calendar months after receiving from the lessors a notice in writing, requiring them, the lessees, to make good such default, and to make such compensation for damage (if any), it shall be lawful for the lessors to take up and remove any pipes which shall have been laid down under the powers aforesd, and thereupon this grant and demise shall cease and determine: AND THE SD A. and B. do hereby for themselves, their heirs, exors, admors, and assigns, covenant with the lessees, that they paying the rent hereby reserved, and performing and observing the covenants and stipulations hereinbefore contained, and on their part to be performed and observed, may quietly have, use, and enjoy the powers, authorities, and premises hereby demised at all times during the sd term of —— years, without any interruption by the sd A. and B., or any person or persons rightfully claiming any estate in the sd lands through or in trust for them.

Power to lessors to determine grant in case of nonpayment of rent, &c.

Covenant for quiet enjoyment.

IN WITNESS, &c.

VII.

PREC. VII.

DEMISE *by a* LANDOWNER *to an* URBAN AUTHORITY *of the* RIGHT *of* MAKING *a* SEWER, *and* AGREEMENT *for* DISPOSAL *of* SEWAGE, *under the* PUBLIC HEALTH ACT, 1875. (*c*)

Parties. Parties, A., of, &c., who or other the person or persons for the time being entitled to the possession or receipt of the rents and profits of the lands hereinafter mentioned, is or are comprised in and designated by the expression "the landowner," where the same is hereinafter used, 1. The mayor, aldermen, and burgesses, acting by the council of the town and borough of ——, in the county of ——, *or*, "the local board of ——," *or*, "improvement commissioners of ——," who and whose successors and assigns are hereinafter included

Recital. in the expression "the local authority," 2: WHAS the local authority have adopted and determined to carry out a scheme for the drainage and disposal of the sewage of the town and district of —— aforesd, and to facilitate the carrying out of the sd scheme the parties hereto have agreed to enter into the arrangement hereinafter contained for the conveyance of the sd sewage through the lands hereinafter mentioned, forming part of the settled

(*c*) See the Act, 38 & 39 Vic., c. 55, ss. 4, 5, 6, 7, 13, 14, 16, 27, 175, 176, 305. The Act enables the local authority to acquire the easement in perpetuity or for a term, and enables limited owners to convey under the Lands Clauses Acts, but does not enlarge their leasing powers, which must, therefore, depend on the instrument under which they derive title. A contract for the disposal of the sewage must be limited to twenty-five years (s. 27), and the lease of the easement is, therefore, in this precedent confined to that term. In default of a new arrangement being entered into at the end of the term, it would be necessary for the local authority to put in force their compulsory powers. By s. 13, so much of the sewer as is *within* the local government district is vested in the local authority absolutely. This precedent may be altered (as regards the easement of laying down and maintaining the sewer) into a grant in fee by a limited owner under the Lands Clauses Acts, in consideration of a gross sum or a rent-charge, with the aid of Precedent LV. or LVII., pp. 386, 391.

estates of the sd A., of which he is tenant for life under the will, &c., and for the delivery of the sd sewage upon the farm and lands hereinafter mentioned, forming part of the sd settled estates, and supplying the same for the use of the landowner, during the period and in manner and upon the terms hereinafter expressed: NOW THIS INDRE WITNESSETH that for effectuating the sd arrangement, and in consideration of the rents, covenants, and agreements hereinafter reserved, or made payable, and contained, and on the part of the local authority to be paid, observed, and performed, the sd A., by virtue and in exercise of every or any power or authority enabling him in this behalf, whether under the sd will, or the Public Health Act, 1875, or otherwise howsoever, and also by virtue of the estate and interest of him, the sd A., under the sd will, doth hereby grant and demise unto the local authority, FULL and free power and liberty to convey the sewage and waste water of such part of the town of —— aforesd, as can be drained into the sewers shown upon the plan hereunto annexed, through, over, or under the lands forming part of the settled estates of the sd A., situate in the parishes of ——, in the county of ——, from the point marked X. to the point marked Y. in the sd plan, or to such other point as may be determined upon in lieu of the sd point Y. as hereinafter mentioned, by means of a continuous line of cast-iron pipes, the internal diameter of which shall be —— inches, in the course of the line coloured —— and marked Main Sewer in the said plan, or along such other line as may be determined upon in lieu of the sd line coloured ——, as hereinafter mentioned, so far as such line coloured ——, or such substituted line, passes through the lands of the sd A.: AND TO deliver and discharge the sd sewage and waste water at the sd point marked Y. upon the farm called ——, forming part of the estates of the sd A., or upon such other part of the lands of the sd A. as may be determined upon as hereinafter mentioned: AND TO lay down, construct, erect, and make in, through, upon, or under the sd lands, such pipes of the description herein-

Wit-nesseth.

Grant.

Liberty to convey sewage through lands.

To discharge sewage at a certain point.

To lay down pipes, &c.

PREC. VII.

before mentioned, wells, tanks, sluices, ducts, weirs, culverts, engines, machinery, works, and conveniences as may from time to time be necessary or expedient for or in relation to or connection with the purposes aforesd, or any of the other purposes hereinafter expressed: PROVIDED ALWAYS that no buildings of any description shall be erected upon any portion of the sd lands without the previous written consent of the landowner: AND ALSO full power and liberty from time to time to repair, replace, and maintain the sd pipes, wells, and tanks, and all the works in connection therewith: AND ALSO full power and authority for the local authority and their surveyors, engineers, workmen, and agents, with or without carts and horses, from time to time to enter upon the sd lands for any of the purposes aforesd, And to take possession of, use, and occupy such part or parts of the sd lands, and during such period or periods as may be requisite for any of such purposes, and generally to do and perform such acts and things in or upon any of the lands aforesd as may be necessary or proper for or in relation to any of the purposes aforesd: PROVIDED ALWAYS that the several powers and liberties hereinbefore granted and demised shall be subject to the restrictions and provisions hereinafter expressed and contained: TO HAVE AND TO HOLD the powers, liberties, and premises hereinbefore expressed to be hereby granted and demised unto the local authority from the —— day of —— for the term of twenty-five years: YIELDING AND PAYING unto the landowner during the sd term for or in respect of the powers and liberties hereby granted and demised the yearly rents following, that is to say, the yearly rent of £—— as and by way of a wayleave rent, to be payable on the —— day of —— in every year, the first payment thereof to be made on the —— day of ——: AND ALSO the yearly rent of £—— as an occupation rent for every acre in excess of —— acres, and so in proportion for any less quantity than an acre (in excess as aforesd) of surface land which may be taken and occupied by the local authority whether permanently or

Buildings not to be erected.

Power to repair works.

To enter.

Take lands.

Habendum.

Reddendum.

Wayleave rent.

Occupation rent.

temporarily for any of the purposes aforesd, such occupation rent to be payable on the —— day of —— in every year during the sd term in respect of all land so occupied in excess as aforesd during the preceding year for the period during which such occupation shall have continued: PROVIDED ALWAYS, and it is hereby agreed, that not more than —— acres of land in the whole shall be taken, used, or occupied by the local authority at any one time under or by virtue of these presents without the consent in writing of the landowner or his agent: PROVIDED ALSO, and it is hereby agreed and declared, that the line of the sd main sewer may at any time before the sd works shall have been commenced or after the commencement thereof be altered by the landowner by a notice in writing signed by him or his agent and delivered to the clerk of the local authority or left at their town hall, [office,] provided the line so substituted shall be certified by the engineer of the local authority to be free from objection and not to exceed in length the length of the sd line marked X. Y. on the sd plan, or otherwise to involve any increased expenditure of money on the part of the local authority or any delay in the completion of the works: AND THE LOCAL AUTHORITY do hereby covenant with the landowner that they the local authority will, &c., *to pay rents*, p. 498, *and rates and taxes*, p. 499: AND THAT the local authority will lay down such pipes and execute such works for the conveyance of the sd sewage and waste water in the line of the sd main sewer, and the reception, storage, regulation, and distribution of the sd sewage and waste water as are specified in the schedule hereto: AND THAT all pipes and other works belonging to the main sewer shall, as far as the case will admit, be laid and fixed at such a depth below the surface of the sd lands as not to interfere with the proper cultivation of such lands: AND FURTHER that the local authority will lay down, execute, construct, and make all the pipes and other works and things specified in the sd schedule hereto, or which may be otherwise requisite for the conveyance of the sd sewage

Limit to amount of land taken.

Power to change line of main sewer.

Covenants by local authority.

To do works in schedule.

Pipes, &c. not to interfere with cultivation.

All works to be done in a substantial manner.

PREC. VII.

and waste water along the sd main sewer, and the reception, storage, and regulation thereof or incidental thereto, in a substantial and proper manner and with the best materials of their respective kinds according to the requirements and stipulations expressed in the sd schedule hereto, and to the reasonable satisfaction of the landowner or his engineer or agent: AND THAT the sd main sewer and all the works and things specified in the sd schedule hereto, or otherwise incidental thereto respectively, or which shall be requisite for the conveyance of the sd sewage along such sewer and the delivery thereof for distribution on the sd lands, shall be completed within —— years from the date of these presents: PROVIDED ALWAYS that no sewage shall be allowed by the local authority to pass through the sd main sewer until the engineer of the local authority and the engineer or agent of the landowner shall have made and delivered to the sd respective parties their joint certificate that the same and all works connected therewith are completed and in proper working order: PROVIDED ALSO that no part of the sd sewage and waste water shall be delivered or required to be received or disposed of by the landowner at any point except the terminus of the sd main sewer or such other point or points as may from time to time be appointed by the landowner in that behalf: PROVIDED FURTHER that the sd sewage and waste water shall be delivered at the sd point Y. or such point as may be substituted for the same as aforesd, at a depth of —— inches below the surface of the land or at such other level as may be reasonably required by the landowner: AND ALSO that, in case at any time or times during the sd term, whether before or after the completion of the sd works, the landowner shall desire the sd sewage and waste water to be diverted wholly or in part at any point or points along the line of the sd main sewer for the purpose of being delivered at such point or points of diversion or of being conveyed to any other part or parts of the sd land, and of such desire shall give notice in writing to the clerk for the time being of the local authority by de-

Time for completion of works.

No sewage to pass till engineers' certificate obtained.

Provisions as to delivery of sewage.

Power to landowner to require delivery of sewage at intermediate points.

livering or leaving the same as aforesd, then and in every such case the local authority shall, within a reasonable time from the receipt of such notice, at their own cost and to the reasonable satisfaction in all respects of the agent for the time being of the landowner, make and construct such outlet or outlets, and fix such screw valve, or valves, or other apparatus or works at the point or points of diversion as shall be necessary for the purpose of diverting (wholly or in part, as the case may be) the sd sewage and waste water, and regulating the flow or passage of the same from such point or points of diversion: PROVIDED THAT the number of screw valves which the local authority may be so required to fix shall not exceed in the whole ——, AND THAT the sd sewage and waste water shall be delivered at the respective points of diversion hereinbefore mentioned at a depth of —— inches below the surface of the land, or as near thereto as the case will admit, AND SHALL also, if required as aforesd, within a reasonable time after such notice, and to the like satisfaction, lay, make, and connect such junctions and connections as shall be necessary for connecting the sd main line of pipes with any pipes, drains, or appliances, by means of which the landowner shall intend to convey the sd sewage and waste water from the sd point or points of diversion, but so that such pipes, drains, and appliances as last aforesd, and any other works necessary for conveying and distributing the sewage from any such openings as last aforesd, shall be made by the landowner at his own expense: AND FURTHER that the local authority will at all times during the sd term keep and maintain all the sd pipes, works, and premises hereinbefore covenanted or authorised to be laid down, constructed, or made by the local authority in proper and efficient repair, working order, and condition [AND THAT no alteration shall at any time be made by the local authority in any of the sd pipes or works without the written consent of the landowner or his agent]: AND THAT, in case any alteration shall at any time during the sd term be required

Works to be kept in repair.

As to alterations.

PREC. VII.

by the local authority to be made in any of the sd pipes or works, the same shall be executed and carried out by them to the reasonable satisfaction of the landowner or his engineer or agent: AND THAT the local authority will (except in cases of emergency requiring immediate repair or alteration) give reasonable notice in writing to the landowner and the tenants of the sd lands before making any entry thereon for the purpose of laying the sd pipes or executing or doing any repairs or alterations, or other works or things as aforesd: PROVIDED ALWAYS that, after the completion of the sd works, no person shall be at liberty to enter upon the sd lands for the purpose of examining or inspecting the sd pipes or other works, or for any other purpose, on behalf of the local authority, except such inspector as shall from time to time be appointed for that purpose by the local authority, with the approval in writing of the landowner, or his principal land-agent (which approval may be at any time revoked, without assigning any reason for such revocation), and except workmen or other persons necessarily employed in carrying out repairs or alterations, and that the local authority, after making any excavation, or executing any of the works, repairs, or alterations hereby authorised, will as soon as conveniently may be restore the surface of the ground to the same state as it was in before such excavation or other works were executed, and for that purpose fill for a depth of at least —— inches the upper part of any such excavation with the best soil which shall be removed in making the same excavation. *To carry away the soil, &c., taken out in the execution of the works, or leave the same for the use of the landowner, as in last Precedent*, p. 1438; *To restore the drainage of the lands, if interfered with*, p. 1438;

Provisions as to entry on lands.

AND ALSO that the landowner may cause any drains coming from any houses or tenements on the lands aforesd to empty into the sd main sewer, the necessary connections and communications with and between the same being made by and at the cost of the landowner, and subject to the

Power to landowner to connect house-drains with sewer.

control and under the superintendence and to the satisfaction of the engineer of the local authority: AND THAT the sd sewage and waste water shall not be allowed to escape or filter on to or through any of the lands aforesd, except at the places to which the same shall be conveyed for the purpose of being distributed as aforesd. *Not to do unnecessary damage to the lands or crops, and to compensate the tenants for damage*, p. 1437: AND ALSO that the sd sewage and waste water shall be passed through proper sludge strainers before being allowed to pass through the sd main sewer: AND THAT no storm water, and no matter which would render the sd sewage and waste water injurious to vegetation or diminish the value thereof for agricultural purposes, shall, so far as the local authority may be able to prevent the same, be allowed to pass through the sd main sewer: PROVIDED ALWAYS, and it is hereby agreed and declared, that it shall be lawful for the landowner at any time or times, at his own expense, to take up and relay in any direction he may think fit the whole or any part of the sd main sewer, where the same passes over the lands aforesd, and the pipes, works, and apparatus connected therewith, provided the outlet or terminus thereof is not placed at a higher level than the point marked Y on the sd plan, and so that any such alteration is executed and carried out to the satisfaction of the engineer for the time being of the local authority, and that the local authority shall remain liable to keep such main sewer, pipes, works and apparatus (after the completion of such alteration) in repair and proper condition, in the same manner as if such alteration had not been made; PROVIDED ALSO, and it is hereby agreed and declared, that nothing herein contained shall prejudice or affect the right of the landowner to work and get any mines, minerals, or substances lying under the sd main sewer, but so that he shall not thereby cause any subsidence of the soil, or any damage or injury to the sd main sewer or the other works aforesd: AND THIS INDRE ALSO WITNESSETH that, in pur-

Sewage not to be allowed to escape on to lands.

Sewage to be strained before passing into sewer.

No storm water, &c., to pass into sewer.

Power to landowner to divert main sewer.

Landowner's mining rights reserved.

Covenant to deliver

PREC. VII.

sewage for use of landowner.

suance of the sd agreement in this behalf and in consideration of the premises, the local authority do hereby further covenant with the landowner that, when and so soon as the necessary works for that purpose shall have been completed as aforesd, unless the landowner shall in manner hereinafter mentioned otherwise direct, the local authority will cause all the sewage and waste water from such part of the town of —— aforesd as can be drained into the sewers shewn on the sd plan to flow, as and when such drainage shall be completed, through the sd main sewer and so as to enable the landowner at his pleasure from time to time during the residue of the sd term of twenty-five years either to receive the same at the terminus or outfall of the sd main sewer or to divert or intercept the whole or any part thereof by means of any such branch or intermediate ducts or pipes as aforesd, And to regulate and control the discharge and flow of the sd sewage and waste water at the sd terminus or outfall or into any such branch or intermediate ducts or pipes in such manner as he may think fit: And will permit the landowner during the residue of the sd term of twenty-five years to dispose of and use the sd sewage and waste water either at the terminus or outfall of the main sewer or at any such intermediate point or points as aforesd for his own benefit for the purpose of irrigation or for any other purpose and in any other manner without making any payment or compensation for the same to the local authority: Provided always, and it is hereby agreed and declared, that all works and things which may be requisite for the purpose of distributing the sd sewage and waste water over any part of the sd lands, whether from the main outlet or any branch outlet or incidental thereto or for otherwise enabling the landowner to utilise the same, with the exception of such works and things as are hereinbefore covenanted to be executed and done by the local authority, shall be executed and done by the landowner at his own expense: Provided also that the sd sewage and waste water shall not be disposed of or dealt with by the land-

Power to landowner to dispose of sewage.

owner so as to be a nuisance or annoyance to the owners or occupiers of any houses or lands in the neighbourhood or to the public, and in the event of any such nuisance or annoyance arising the local authority shall be indemnified by the landowner from all damages and expenses in respect thereof: PROVIDED ALWAYS, and it is hereby agreed and declared, that if the respective rents hereby reserved or any of them shall be unpaid for the space of twenty-one days next after the same shall have become payable as aforesd, whether lawfully demanded or not, or in case the local authority shall at any time make default in the performance or observance of any of the covenants or stipulations hereinbefore contained and on their part to be observed and performed, and shall not make good such default and also make full compensation to the landowner and his tenants for all damage thereby sustained by him or them within three calendar months after receiving from the landowner a notice in writing to be delivered or left as aforesd requiring the local authority to make good such default and to make such compensation for damage (if any), then and in any such case it shall be lawful for the landowner by a further notice in writing to the local authority, to be delivered or left as aforesd, to determine the grant and demise hereinbefore contained, which shall thereupon cease accordingly: PROVIDED ALSO, and it is hereby further agreed and declared, (but without prejudice to the power lastly hereinbefore contained), that in case the local authority shall at any time make default in executing any repairs or other works which ought to be executed by them under the provisions hereinbefore contained, and shall continue such default for a period of one calendar month after receiving from the landowner or his agent a notice in writing (to be delivered or left as aforesd) requiring them to execute such repairs or works, it shall be lawful for the landowner himself to execute the same, and in such case the costs and expenses so incurred by him with interest thereon at the rate of £—— per cent. per annum from the time of the

Power to landowner to determine grant on non-payment of rent, &c.

Power to landowner to do repairs on default of local authority.

PREC. VII.

same being incurred and all damages sustained by the landowner through such default of the local authority shall be repaid by them to him on demand, *Covenant by A. for quiet enjoyment*, p. 1439, *mutatis mutandis*.

IN WITNESS, &c.

Schedule of Works.

VIII.

PREC. VIII.

DEED *of* INDEMNITY *by Vendor to* PURCHASER *in respect of* DEFECTIVE TITLE, *the Indemnity being in the form of* ABSOLUTE COVENANTS *for* TITLE *as in a* MORTGAGE.

Recites conveyance of even date.

Parties, A., *vendor*, 1; B., *purchaser*, 2: WHAS by an indre bearing even date with these presents, and expressed, &c., a messuage farm and lands known as ——, situate in the parish of ——, in the county of ——, comprising —— acres or thereabouts, have for the consideration therein mentioned been assured by the sd A. to the use of the sd B., his heirs and assigns, and the sd indre contains the usual qualified or restricted covenants by the sd A. with the sd B. for the title to and quiet enjoyment, freedom from incumbrances, and further assurance of the sd premises:

Nature of defects in title.

AND WHAS upon the investigation of the title to the sd hereditaments it appeared that such title was or was alleged to be derived under a conveyance to X. deceased, made by indres of lease and release, dated, &c., wherein the same premises were described as containing in the whole —— acres only, in lieu of —— acres, and the deeds and documents produced by the sd A. as evidencing his title to the sd lands and premises appear to show a title to —— acres only, but the whole of the sd lands and premises expressed to be assured by the hereinbefore recited indre of even date herewith have for upwards of

—— years past been in the undisturbed ownership and enjoyment of the sd A., or the persons under whom he claims title: AND WHAS the sd B. accepted the title to the sd premises and completed the purchase thereof as aforesd upon an agreement that the sd A. should enter into such absolute covenants for the title to and quiet enjoyment, freedom from incumbrances, and further assurances of the sd premises as are hereinafter contained, and which covenants are intended to override and be in no wise controlled by the qualified or restricted covenants contained in the sd conveyance of even date herewith as aforesd: NOW THIS INDRE WITNESSETH that, in pursuance of the sd agreement and in consideration of the premises, the sd A. doth hereby for himself, his heirs, exors, and admors, covenant with the sd B., his heirs and assigns, That he, the sd A., now has full power to grant or assure all the hereditaments and premises by the sd indre of even date herewith expressed to be granted or assured to the use of the sd B., his heirs and assigns, in manner therein expressed, And, &c., *for quiet enjoyment, freedom from incumbrances, and further assurance as in a mortgage*, p. 733.

PREC. VIII.

Agreement for absolute covenants for title.

Witnesseth.

Covenants.

IN WITNESS, &c.

IX.

AGREEMENT *for* WORKING *a* QUARRY. *A Short Form.* (*d*)

PREC. IX.

Agreement, &c., between A., hereinafter called the owner, 1; B., hereinafter called the contractor, 2: IT IS HEREBY mutually agreed that the contractor shall get stone from the quarry lately opened on —— farm by the owner upon the terms following:—

(*d*) It will be seen that this is merely a working agreement, not operating as a demise. For forms operating as demises of quarries, &c., see LEASES, MINING.

PREC. IX.

THE CONTRACTOR SHALL AT HIS OWN EXPENSE—

1. GET and cord building and rough blue stone from the sd quarry for the use of the owner.

2. REMOVE the whole of the stone from any pit before opening another.

3. FILL IN every pit as soon as it is exhausted, or sooner if required, and replace the top mould so as to render it as fit as circumstances will admit for agricultural operations.

THE OWNER SHALL—

4. PAY to the contractor the sum of —— shillings per cubic yard for getting and cording building stone, and the sum of —— shillings per cubic yard for getting and cording rough blue stone.

AND IT IS HEREBY AGREED—

5. THAT the contractor shall cord the stone at the option of the owner at the mouth of the quarry or by the side of the turnpike road, but in the latter case the owner shall cart the stone from the quarry to the side of the turnpike road at his own expense.

6. THE contractor shall receive a weekly payment on account in proportion to the work actually done but not to exceed £—— a week for each man actually employed. Such payment is to be brought into account when the corded stone is measured and the balance, if any, paid to the contractor. If the balance should be against him, he shall forthwith repay the same to the owner.

7. EITHER party may determine this contract on giving one week's written notice, and thereupon the contractor shall, if required by the owner, fill in every open pit and replace the top mould so as to render it as fit as circumstances will admit for agricultural operations. But if the owner shall determine the contract, the contractor shall be at liberty prior to filling in any pit to get and cord the stone from the same, he working with all proper despatch and being paid for the stone after the rate aforesd.

IN WITNESS, &c.

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THE END.

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